

In the Matter Of:

ALASKA BUILDING vs. 716 WEST FOURTH AVENUE LLC

JAMES GOTTSTEIN - VOL. II

October 23, 2015

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1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 THIRD JUDICIAL DISTRICT AT ANCHORAGE

4 ALASKA BUILDING, INC., an
Alaska corporation,

Plaintiff,

**CERTIFIED
TRANSCRIPT**

vs.

716 WEST FOURTH AVENUE LLC,
and LEGISLATIVE AFFAIRS
AGENCY,

Defendants.

Case No. 3AN-15-05969 CI

DEPOSITION OF JAMES B. GOTTSTEIN

VOLUME II

Pages 59 - 147, inclusive

Friday, October 23, 2015
9:00 A.M.

Taken by Counsel for
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at
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Anchorage, Alaska

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1 ANCHORAGE, ALASKA; FRIDAY, OCTOBER 23, 2015

2 9:06 A.M.

3 -o0o-

4 MR. ROBINSON: On record. Good morning,
5 everyone. Jeff Robinson, representing 716 West Fourth
6 Avenue. I'll refer to 716 West Fourth Avenue as 716
7 throughout this deposition.

8 If I could have the other parties in the room
9 identify themselves, and then I'll ask Gary to swear
10 Mr. Gottstein in.

11 MR. CUDDY: This is Kevin Cuddy on behalf of
12 the Legislative Affairs Agency.

13 MR. GOTTSTEIN: Jim Gottstein, president of
14 Alaska Building, Inc.

15 I'm still sworn in, aren't I?

16 THE REPORTER: Or I can re-swear you. It
17 doesn't matter.

18 JAMES B. GOTTSTEIN,
19 deponent herein, having been previously
20 sworn on oath, was further examined
21 and continued to testify as follows:

22 EXAMINATION

23 BY MR. ROBINSON:

24 Q. Do you understand that this is a continued
25 deposition from the 16th, and you're under oath?

1 A. Yes.

2 Q. Mr. Gottstein, I want to start by asking
3 you some questions about your background. What is
4 your specific relationship with ABI?

5 A. I'm the president and sole owner.

6 Q. Okay. When was it --

7 A. ABI being Alaska Building, Inc.?

8 Q. Right. When was ABI formed?

9 A. Well, it's a matter of public record.
10 Sometime before 1995, so it might have been a couple
11 years before that.

12 Q. So you're the hundred percent owner. What
13 titles do you hold?

14 A. All of them. President, secretary and
15 treasurer.

16 Q. Director? Shareholder?

17 A. Director, right.

18 Q. Vice president?

19 A. Not vice president.

20 Q. What is the purpose of your business?

21 A. It owns the Alaska -- the Alaska Building.

22 Q. Essentially, you're a landlord?

23 A. Yes.

24 Q. Okay. Who are your current tenants?

25 A. Bloomsbury Blooms; Alaska Ivory Exchange;

1 Pil's Deli; Octopus Ink; Side Street Espresso; John
2 Schwieder's Photography; G Street Fox or G Street
3 Gear; Alaska Nanuq Commission; Jay Friedheim --
4 that's F-r-i-e-d-h-e-i-m -- Alaska World Affairs
5 Council; Judy Berman; Sawadee Thai Massage, if they
6 move in; World Wildlife Fund; and Partners for
7 Progress.

8 Q. Who were the tenants, roughly, around the
9 time period of September or October of 2013? Were
10 they mostly the same?

11 A. Alaska Center for the Environment and --
12 and not Sawadee. And Blu MensWear were -- and not
13 Bloomsbury Blooms.

14 Q. I want to talk a little --

15 A. And then, of course, Criterion was a tenant
16 for about -- for a year.

17 Q. I want to discuss some background details
18 about the lease extension at issue. It's your
19 understanding the lease extension was signed on
20 September 19th, 2013?

21 A. I object to the characterization as an
22 extension. Yeah, I believe the document was signed
23 on September 19, 2013.

24 Q. And you reviewed the original lease which
25 was signed in 2004? Have you reviewed that?

1 A. I have a copy of that. I haven't really --
2 I have looked at it.

3 Q. Have you reviewed the previous amendments
4 to the original lease?

5 A. Yeah. I have looked at them.

6 Q. Have you published them on your website?

7 A. I think they probably are. I'm not sure.
8 Certainly, the lease -- the September 19th, 2013,
9 lease is there.

10 Q. The lease was recorded?

11 A. Memorandum of lease. Not the lease.

12 Q. The original lease was executed between 716
13 and the Legislative Affairs Agency?

14 A. Are you talking about the 2004 lease?

15 Q. Yes.

16 A. The 2004 lease I think was recorded, and
17 the -- now what was the question?

18 Q. It was executed between 716 and the Agency,
19 correct?

20 A. 716 West Fourth Avenue LLC.

21 Q. Right.

22 A. Yes.

23 Q. So it's a yes?

24 A. Well, it was -- yes.

25 Q. And the term of that lease was for five

1 years, including five one-year renewal options?

2 A. I don't recall.

3 Q. But you have published that lease on your
4 website? You have reviewed it?

5 A. I have looked at it.

6 Q. Is it your understanding that the original
7 lease was competitively bid?

8 A. I don't recall. I don't know.

9 Q. So you're not aware that it was -- that an
10 RFP was publicly issued in July of 2003? Are you
11 aware?

12 A. No.

13 Q. You are aware you're a neighbor of the
14 Anchorage LIO, correct?

15 A. Yes.

16 Q. And they have been in leased space at
17 716 West Fourth Avenue for over 20 years?

18 A. Yes.

19 Q. 716 then, of course, was the landlord
20 before and after the agreement at issue, correct?

21 A. 716 West Fourth Avenue LLC, yes.

22 Q. I think we can proceed through this
23 deposition by referring to 716 West Fourth Avenue
24 LLC as 716. Can we agree to do that?

25 A. You can do what you want. I can, I think,

1 say the whole name. I mean, I -- you know, there
2 was a change in control and ownership and -- at the
3 same time. So to the extent that you're
4 asserting -- you know, there may be a question about
5 whether or not it's, quote, the same landlord. It
6 was the same -- it was 716 West Fourth Avenue LLC
7 both times, and there was a change in -- an apparent
8 change in control.

9 Q. On January 1st, 2015, the Agency commenced
10 payment of the new lease, correct?

11 A. Well, I have asked for --

12 Q. I'm just asking you principally to be
13 responsive to the question. Is that your
14 understanding?

15 A. I have asked for that information in
16 discovery, and you've refused to provide it, so I
17 don't know.

18 Q. The lease payments were approved for
19 funding by the legislature when it adopted its
20 fiscal year 2015 budget, correct?

21 A. Presumably. I mean, that's my
22 understanding. You know, this is all public
23 information.

24 Q. I'm asking you your knowledge. Is that
25 your understanding?

1 A. Well, I've read about it in the newspaper.

2 Q. I want to talk about the claims that you're
3 making in this lawsuit in your own words. Your
4 first claim with respect to the lease issue is it
5 does not extend a real property lease. Can you
6 explain the basis for that claim?

7 A. Well, I think that I've explained that
8 pretty extensively in pleadings.

9 Q. Are you objecting to answering the
10 question?

11 A. No, but I think it's -- you know, it's
12 unnecessary. So basically the old building was torn
13 down to its steel frame and foundation, except for
14 there was a little piece of wall left on the bottom
15 south corner of the west wall and maybe -- I
16 don't -- I'm not sure what happened with the floors.
17 I know the floors were repoured, but I don't know if
18 they were -- you know, if you could drop something
19 from the top and it would go all the way down to the
20 bottom, I don't recall.

21 The building next to it was completely
22 demolished, damaging my building. And then a new
23 building was constructed where the old one was. And a
24 new building was constructed where the Anchor Pub was,
25 which was a building that was demolished next to mine.

1 And the Legislative Information Offices were vacated
2 for over a year. And that is not an extension.

3 Q. Your second claim, Mr. Gottstein, is that
4 the lease is not, at least in your opinion, at least
5 10 percent below market value as required under the
6 statute. Is that your second claim?

7 A. It is another claim, yes.

8 Q. Explain the reasons for that allegation and
9 support that you have for that allegation.

10 A. Well, I'm familiar with rents in the area
11 and --

12 Q. Can I ask you about that, without
13 interrupting? What's --

14 A. You are interrupting. Okay. Go ahead.

15 Q. Okay. Explain your experience in market
16 rents downtown, other than being a landlord.

17 A. Well, that's primarily it. I'm also a part
18 owner of Carr Gottstein Properties on DeBarr, which
19 has extensive real estate holdings in the city,
20 including the Carr Gottstein Building a few blocks
21 away, also known as the Whale Building. They used
22 to own --

23 Q. Is that Class A office space?

24 A. Yes. And I'm not sure what -- I think
25 my -- we used to own the Resolution Building, too,

1 where the Attorney General's Office is. I'm not
2 kind of sure what the ownership is right now.

3 And I'm just generally aware of office rents
4 in the area. And I don't think there's any real
5 dispute about general office rents in the area having
6 a max of three dollars, maybe \$3.25 per square foot
7 per month for a full-service lease.

8 Q. Have you consulted with other appraisers,
9 in bringing the suit, to value market rent downtown?

10 A. Yeah. I have consulted with people. I
11 mean, yes.

12 Q. Who?

13 A. Well, the only appraiser was Eric Follett.

14 Q. Did you pay Mr. Follett?

15 A. Yes.

16 Q. How much?

17 A. Well, I don't recall. Mostly Mr. Follett
18 was helping me negotiate an agreement with 716 West
19 Fourth Avenue LLC before the -- you know, before the
20 construction started --

21 Q. When did you retain --

22 A. -- and so --

23 Q. So you retained the services in October of
24 2013? Is that about right?

25 A. Yes.

1 Q. Did he offer to you his opinion of the
2 rental rate downtown for the type of office space
3 being rented?

4 A. Yeah.

5 Q. Okay. Did you consult with any other
6 commercial real estate brokers or anyone else in
7 coming up with your estimated value?

8 A. I discussed the situation generally with
9 Dave LeClair of Carr Gottstein Properties.

10 Q. Okay. And we'll get to Mr. LeClair in a
11 bit. Mr. Gottstein, you have alleged in your
12 complaint that you're entitled to punitive damages
13 against 716 West Fourth Avenue LLC. And what's your
14 basis for that claim?

15 A. Well, I think that, really, the lease is so
16 blatantly illegal, as a result of corruption, that
17 punitive damages is warranted.

18 Q. Would you agree with me that, in terms of
19 your pleadings, the only allegation you've made
20 against 716 is that they entered into the lease? Is
21 it your --

22 A. Yeah. One of the problems is that I'm
23 still conducting discovery, and I think the
24 discovery has certainly kind of buttressed the
25 corruption issue.

1 Q. I'm asking you specifically about your
2 pleadings. You've only specifically pled that 716
3 has entered into the lease, right?

4 A. I don't recall. Do you have a copy of it?

5 Q. I do.

6 A. I'd like to look at it.

7 Q. I can get you a copy of the complaint and
8 amended complaint, when we break, for your review.

9 Is it your assertion that merely by entering
10 a lease, that's outrageous conduct that should entitle
11 you to recover punitive damages?

12 A. It's the underlying conduct.

13 Q. By whom?

14 A. By 716.

15 Q. But you'd agree with me that you didn't
16 plead that?

17 A. Yes, that's true.

18 Q. Describe the --

19 A. I may amend or try to amend, if it becomes
20 a big issue.

21 Q. Please describe the actual compensatory
22 damages you believe you are owed as a result of the
23 lease agreement at issue.

24 A. Well, what I'm claiming is 10 percent of
25 any savings.

1 Q. We discussed that in your deposition on the
2 16th?

3 A. Yes.

4 Q. You've claimed that you're bringing this
5 action on behalf of the State of Alaska. Can you
6 explain that?

7 A. Or the citizens or people of Alaska. Well,
8 it's under citizen taxpayers' standing, and you
9 get -- you've got a situation where you've got
10 corruption. And no officials are willing to redress
11 the corruption in this blatantly illegal lease. And
12 we have this doctrine in Alaska where citizens can
13 bring suit on behalf -- for redress. And that's
14 essentially a suit on behalf of the citizens of
15 Alaska and derivatively, basically, the state or
16 vice versa.

17 Q. You previously asserted, Mr. Gottstein,
18 both in court at the standing hearing and in
19 pleadings before the Alaska Supreme Court, that you
20 believe you're entitled to interest injury standing,
21 correct?

22 A. Yeah.

23 Q. And please describe the nature of that
24 claim.

25 A. That this illegal lease -- that a result --

1 a consequence of this illegal lease is that the
2 Alaska Building was damaged.

3 Q. So by entering the lease, therefore the
4 building was damaged. Will you maintain that
5 position --

6 A. Well, as a result of the lease, my -- the
7 building, the Alaska Building, was damaged.

8 Q. Did the execution of the lease in September
9 of 2013 damage your building?

10 A. You know, I answered that in my responses
11 to your discovery requests.

12 Q. Can you kindly answer again?

13 A. What's the question?

14 Q. Do you believe the execution of the
15 contract in September 2013 damaged your building?

16 A. A result of the execution was that it
17 damaged the building. The actual signing, putting
18 the pen to the paper, did not damage my building.

19 Q. And you still believe you're entitled to
20 roughly a \$2.1 million windfall if the court accepts
21 your qui tam argument?

22 A. Well, I object to the characterization as
23 "windfall," and we'll see whether or not the courts
24 agree with it, but I'm certainly making that claim.

25 Q. And you previously admitted that there's no

1 basis in Alaska statute or common law for that
2 recovery?

3 A. I don't think I -- no, I don't think I
4 admitted that. I mean, I think I'm trying to
5 establish that there is a basis.

6 Q. I want to ask you questions about your
7 questioning of the legality of the lease. Okay?
8 And you've already answered questions germane to
9 this line before, right?

10 A. Ask them. Ask your questions.

11 Q. When did you first specifically become
12 aware of the lease agreement between 716 and the
13 Agency?

14 A. You know, I have -- that's been asked and
15 answered. It was sometime late September or early
16 October.

17 Q. At least at --

18 A. Of 2013.

19 Q. At least by October 3rd, 2013?

20 A. I believe that's correct.

21 Q. Okay. And your knowledge of the lease
22 involved your understanding that the construction
23 renovations would cost tens of millions of dollars,
24 correct?

25 A. Asked and answered. Yes.

1 Q. And specifically 716 West Fourth Avenue LLC
2 was spending in the ballpark 30 to \$40 million in
3 construction renovation efforts, correct?

4 A. I've asked for that information, and -- and
5 you've refused to provide it in discovery. It's the
6 subject of a pending motion to compel, so the --
7 I've certainly seen budgets that say that.

8 Q. You've previously admitted, in requests for
9 admission, that you are aware that tens of millions
10 of dollars were being spent on construction,
11 correct?

12 A. Yeah, I think so.

13 Q. And you were a neighbor of the project,
14 correct?

15 A. Yes.

16 Q. So you personally observed what was
17 happening?

18 A. It looked like, yes, probably, certainly,
19 millions, tens of millions were spent, yes.

20 Q. You've repeatedly claimed that the lease
21 extension is not, in your opinion, an extension,
22 right? And you also came to that conclusion at some
23 point in early to mid-October 2013, right?

24 A. Yes.

25 Q. And that was after you personally reviewed

1 AS 36.30.083, right?

2 A. Yes.

3 Q. And by personally reviewing it, describe
4 what you did.

5 A. Well, I pulled the statute up and read it.

6 Q. Did you read in the statute that there was
7 a requirement that the terms of the lease extension
8 remain exactly the same as the original lease?

9 A. No.

10 Q. You've generally complained -- and,
11 actually, in paragraph 24 of your amended complaint,
12 you --

13 A. Is that the second amended claim?

14 Q. Yes. Jim attempted to convince Pfeffer and
15 716 LLC to not proceed with the LIO project because
16 of the all-but-certain damage to the Alaska Building
17 that would result, and because the LIO project was
18 illegal under AS 36.30.083(a).

19 You've made that claim in your amended
20 complaint?

21 A. Yes.

22 Q. Okay. I want to get into the specifics of
23 that claim, but generally can you describe what
24 specific attempts you took to convince 716 that the
25 lease was illegal?

1 A. I think it was pretty much through
2 Mr. McClintock, 716 LLC's attorney.

3 MR. ROBINSON: I'm going to mark -- have Gary
4 mark -- we're going to start at Exhibit A.

5 (Exhibit A marked.)

6 BY MR. ROBINSON:

7 Q. Looking at Exhibit A, Mr. Gottstein, who is
8 Dave LeClair? Is he with Carr Gottstein?

9 A. Yes.

10 Q. What is his position with Carr Gottstein?

11 A. He's the chief financial officer.

12 Q. On October 11th, 2013, did you write him an
13 e-mail asking him to look into the value of monthly
14 rent at the LIO?

15 A. What was the question?

16 Q. Did you write Mr. LeClair an e-mail asking
17 him about the value of the monthly rent on
18 October 11, 2013, regarding Class A construction
19 cost?

20 A. So Exhibit A --

21 Q. Right.

22 A. -- I think it speaks for itself.

23 Q. I'm asking you to answer the question.

24 A. Well, you know, does it actually say -- I
25 asked him if he could give them to me again.

1 Q. Okay. At some point, when you -- and this
2 was at 7:44 a.m. Did you follow up with Mr. LeClair
3 indicating that you were thinking about filing for
4 an injunction if Pfeffer doesn't provide adequate
5 assurances?

6 A. Uh-huh.

7 Q. What did you mean by that?

8 A. That -- that the project wouldn't damage
9 the Alaska Building.

10 Q. Was that the first time that you mentioned
11 to anyone that you were going to file or possibly
12 file an injunction?

13 A. I don't know. I don't recall. I may have
14 talked to Don before that.

15 MR. ROBINSON: I'm going to hand you,
16 Mr. Gottstein, an e-mail chain dated 10/11/15 --
17 excuse me -- 10/11/13, the same day as the Mr. LeClair
18 e-mail. I'm going to mark this as Exhibit B. If you
19 could take a minute to review it.

20 (Exhibit B marked.)

21 BY MR. ROBINSON:

22 Q. So you sent Mr. LeClair the e-mails roughly
23 around 7:45, 7:50 in the morning on the 11th, right?
24 Excuse me. On the -- yeah, on the 11th, correct?

25 A. Yes.

1 Q. And then fair to say you contacted
2 Mr. McClintock, via e-mail later that morning, and
3 threatened to file an injunction, correct? And this
4 is on page 3 of --

5 A. I -- and I think that I --

6 Q. Did you do that?

7 A. -- probably had talked to Don before that
8 so --

9 Q. I'm asking you -- so it's your testimony
10 that you talked to Mr. McClintock before the 11th
11 about your plan to file an injunction?

12 A. Well, I don't know if it was a plan, but it
13 was certainly something that I was considering. And
14 I -- you know, I can't be sure, but I think I
15 probably did talk to him, before that, about this.

16 Q. But on the 11th, you e-mailed him and asked
17 him if he would accept service on behalf of Pfeffer,
18 correct?

19 A. Yes.

20 Q. Okay. Did Mr. McClintock indicate to you
21 that it would be productive to talk before you filed
22 an injunction?

23 A. Well, he asked to talk.

24 Q. One of your concerns on the 11th was that
25 you didn't believe that Mark Pfeffer was taking your

1 concerns seriously, right?

2 A. Correct.

3 Q. And why did you believe this?

4 A. I had a meeting with him, where he was just
5 very dismissive about my concerns. His plan -- as I
6 said before, I was very alarmed when I heard the
7 idea was to take a front-end loader, or I guess they
8 call them an excavator, to demolish the Empress, old
9 Empress Theater.

10 And I asked about contingency, you know,
11 contingency in the budget and what -- and he basically
12 dismissed the idea. And I said, well, you're going to
13 have to cut the wall -- the wall out, aren't you? He
14 says, oh, no.

15 And to me, that was really outrageous.

16 Q. So your concerns as of this point,
17 October 11, 2013, they had to do with damage to your
18 building? That was your principal concern, correct?

19 A. I -- I was actually also very outraged by
20 the lease agreement itself and had an independent
21 concern about it, and was conflicted about whether
22 or not I should try and stop that, just on the basis
23 of the public interest.

24 And so I'm not -- so -- but my -- the concern
25 expressed in these e-mails is certainly about damage

1 to my building.

2 Q. And that's what I'm getting at, just to be
3 as responsive as we can here. The concern expressed
4 in this specific e-mail had to do with your worry
5 that Mr. Pfeffer was not taking your concerns about
6 any possible building damage seriously, correct?

7 A. Well, I mean, the concern was about the
8 damage to the building.

9 Q. Right.

10 A. And that was, you know, certainly not -- I
11 was not comforted by Mr. Pfeffer's lack of taking it
12 seriously.

13 Q. And after reviewing this e-mail, you'd
14 agree that Mr. McClintock offered to put you in
15 touch with people from Pfeffer Development,
16 including Bob O'Neill, the engineer, to address your
17 concerns. You would agree that that's reflected in
18 Exhibit B, correct? We're on page 1.

19 A. Well, he said, "The line people of the job,
20 Bob O'Neill and Shea Simasko are very experienced
21 and some of the best people I have worked with in
22 terms of professionalism.

23 "Let me know what I can do to help
24 communications."

25 Q. At this point, in October of 2013, roughly

1 the middle of the month, did you retain Mr. Follett?
2 Had you retained Mr. Follett at this point?

3 A. I don't recall exactly when I asked him to
4 help.

5 MR. ROBINSON: I'm going to mark the next
6 exhibit as C.

7 (Exhibit C marked.)

8 BY MR. ROBINSON:

9 Q. Do you want to take a moment to review it,
10 Mr. Gottstein?

11 And this exhibit contains three pages of an
12 e-mail exchange with Mr. McClintock as well as an
13 invoice dated 10/25/13.

14 So are you ready, Mr. Gottstein?

15 A. Uh-huh.

16 Q. So you previously admitted, certainly by
17 the middle of the month, certainly by the end of the
18 month you had personally reviewed AS 36.30.083(a).
19 You had read up on the lease. Correct? I'm just --
20 yes?

21 A. I think, yeah, that I had by the time of
22 this.

23 Q. Okay.

24 A. It's not -- I don't know that it's
25 reflected in here.

1 Q. It's not. It's not. I'll get there.

2 So by the time you're having these exchanges,
3 you believed, in your mind, having read the statute
4 and consulted with Mr. LeClair and Mr. Follett, you
5 believed, at this point, that the lease was illegal,
6 correct?

7 A. Yes.

8 Q. Okay. And so on the 25th -- we just talked
9 about your communications with Mr. McClintock about
10 your concerns over the construction process, and he
11 tried to facilitate communications with Pfeffer's
12 people, correct?

13 A. Well, he offered to. I was in
14 communication with him anyway.

15 Q. Right. And so from that period, at least
16 from the --

17 A. And their -- my interaction with him was
18 very unsatisfactory.

19 Q. At least from the 11th, October 11th,
20 through this date, October 25th, 2013, you were
21 routinely in touch with Mr. Pfeffer or his
22 representatives or other entities involved in the
23 project. Fair to say?

24 A. I don't know that I would say routinely,
25 but, I mean -- I'm trying to think when -- there

1 was, I think, a meeting early in the month, maybe
2 the 2nd or 3rd, and then I can't remember when there
3 was the situation with moving the gas line.

4 Q. Right.

5 A. And Bob O'Neill just said he was just going
6 to disconnect my gas line, because we hadn't yet
7 reached an agreement on it.

8 Q. I'm going to get there. I'm asking you
9 between the 11th and the 25th, the dates of these
10 e-mails, you had some communication with entities
11 involved in the project, correct?

12 A. For sure with Mr. McClintock. You know,
13 I'd have to -- you know, it's not unlikely, but I
14 don't have any specific recollections of the
15 timeframe. If you -- you know, of contacts in that
16 timeframe.

17 Q. Fair to say that, on the 25th, you
18 expressed two principal concerns to Mr. McClintock.
19 The first was the integrity of the Alaska Building,
20 right? And this is at the bottom of page 1 of your
21 e-mail. Correct?

22 A. Uh-huh.

23 Q. And the second was that you not bear any
24 costs if something were to go wrong, right? Those
25 were the two concerns that you expressed as of

1 October 25th, 2013?

2 A. You know -- but I believe that I had also
3 expressed to Mr. McClintock --

4 Q. I'm asking you --

5 A. And I'm trying to answer the question.
6 Would you let me, please?

7 You asked what my communications were, and
8 they're not all necessarily reflected in e-mails. And
9 I believe that I had a separate conversation with
10 Mr. McClintock, where I talked about the illegality of
11 the lease, which I didn't necessarily put in writing,
12 at that point, before then.

13 Q. My question, Mr. Gottstein, specifically
14 had to do with the e-mail exchange on October 25th,
15 2013. I direct --

16 A. That was not your question.

17 Q. Yes, it was. And I --

18 THE WITNESS: Can you read it back, the
19 question?

20 BY MR. ROBINSON:

21 Q. I can rephrase the question so we're clear
22 about what question you're answering. Would that --

23 THE WITNESS: Could you read back the
24 original question?

25 MR. ROBINSON: Okay.

1 THE REPORTER: And the second was that you
2 not bear any costs if something were to go wrong,
3 right? Those were the two concerns that you expressed
4 as of October 25th, 2013?

5 THE WITNESS: Right. So that was not limited
6 to the e-mail.

7 BY MR. ROBINSON:

8 Q. Mr. Gottstein, looking at page 1 of -- this
9 is Exhibit C, correct?

10 The bottom of page 1, in writing to
11 Mr. McClintock on October 25th, 2013, you specifically
12 asserted that your complaints -- or your concerns were
13 the integrity of the Alaska Building and that you not
14 bear any costs as a result of what you term "Mark's
15 project," correct?

16 A. The document speaks for itself.

17 Q. So that's a yes?

18 A. The document speaks for itself.

19 Q. Earlier in this chain -- and I'll refer you
20 to page 3 -- did you try to negotiate with
21 Mr. McClintock an agreement or provision in some
22 contract whereby you would be compensated
23 \$10 million in the event the building was damaged;
24 in other words, Mr. Pfeffer would have to buy your
25 building for \$10 million if you believed it was

1 damaged?

2 A. If there was a catastrophic -- if there was
3 catastrophic damage.

4 Q. So you wanted a \$10 million purchase
5 obligation included in --

6 A. The reason for that was to give him a very
7 large incentive not to damage the building. That
8 building was purchased by my grandfather in 1924 or
9 '5, and my father lived in it for a while, and my
10 sister. I bought it from my father to -- who has no
11 sentimental attachment to it, basically to prevent
12 him from tearing it down. I considered it as an
13 historic Anchorage building, and so it was very
14 important for me that the building remain.

15 Q. What's the current tax-assessed value of
16 your property?

17 A. I don't know exactly. It's probably about
18 1.1 million.

19 Q. Between one -- around 1.1 million?

20 A. I think something like that.

21 Q. In roughly around the date of
22 October/November 2013?

23 A. I think so. Somewhere -- you know, one to
24 1.2 million.

25 Q. As part of this e-mail chain on the 25th

1 with Mr. McClintock, you threw out a couple numbers
2 regarding what you expected to be paid to date,
3 correct?

4 And I'm referring to the top of page 1 that
5 assumes Mr. Pfeffer should pay for both the engineer
6 and Mr. Follett's costs, right? You asserted that you
7 thought, to date, \$10,000 was a fair amount?

8 A. Yes.

9 Q. And the invoice that you submitted was in
10 the amount of 6,344, and you wanted Mr. --

11 A. That --

12 Q. Is that correct?

13 A. Excuse me --

14 Q. Yeah.

15 A. -- for interrupting.

16 Q. Go ahead.

17 A. Well, that was for my time, my attorney
18 time.

19 Q. So specifically for your attorney time, you
20 wanted \$6,344 as a precondition to meet with
21 Mr. McClintock, right?

22 A. I didn't say that was a precondition. I
23 wanted him to.

24 Q. Okay. Let's go over -- how much do you
25 charge an hour, Mr. Gottstein?

1 A. 325.

2 Q. Had you been keeping track of your time in
3 this lawsuit?

4 A. Yes.

5 Q. Had you been keeping track of the time that
6 you expended when you were negotiating regarding the
7 construction?

8 A. At least some of it.

9 Q. So the \$6,344 amount is simply for your
10 professional services up to that point. Is that
11 correct? Is that what you're saying?

12 A. Yes.

13 Q. And the \$10,000 amount wrapped in other
14 costs from Mr. Follett and BBFM, correct?

15 A. Yes.

16 Q. So had you already, at that point, expended
17 money with Mr. Follett and BBFM for consulting work
18 on the project?

19 A. Well, I had incurred it. I don't -- I
20 don't think that I probably paid it yet.

21 Q. Did Mr. McClintock --

22 A. And I just didn't think that 716 LLC's
23 project should -- that Alaska Building should have
24 to bear any costs as a result of that.

25 Q. Did Mr. McClintock, in this e-mail chain,

1 offer again to meet with you to discuss your
2 concerns?

3 And this was sent on a Friday, October 25th,
4 right?

5 A. Yes.

6 Q. He did offer that?

7 A. Yeah.

8 Q. Did you meet on 10/28?

9 A. On that Monday, yes, I believe so.

10 Q. Okay. And so it was Monday, October 28th,
11 2013, correct?

12 A. Yes.

13 MR. ROBINSON: I'm going to mark the next
14 exhibit as Exhibit D.

15 (Exhibit D marked.)

16 BY MR. ROBINSON:

17 Q. So Exhibit D is an e-mail exchange dated
18 October 30th, 2013, which is a Wednesday, correct?

19 A. Yes. I mean, according to this.

20 Q. Yeah. And so you had met on Monday, the
21 28th, as discussed in that e-mail chain on the 25th,
22 right?

23 A. I believe so.

24 Q. And your frustration in this e-mail,
25 specifically expressed in this e-mail, was that you

1 didn't believe 716 was going to sign the
2 indemnification agreement with language that you
3 wanted included. Is that accurate?

4 A. Yes.

5 Q. So in your mind, the meeting on the 28th
6 didn't go well, so in this e-mail, at some point you
7 threatened to launch the grenade. And if you can
8 explain what you meant by that.

9 A. Just filing for a preliminary -- for the
10 lawsuit and asking for a preliminary injunction to
11 stop the project. And I think that this all, you
12 know, reflects what I said earlier about that I had
13 an independent interest in trying to stop this
14 outrageous lease.

15 Q. Mr. McClintock informed you in the same
16 e-mail on the same day that he was comfortable with
17 the process the Agency's pursued, right?

18 A. It speaks for itself.

19 Q. Okay. Also on the 30th of October, 2013,
20 you started drafting letters to then Attorney
21 General Michael Geraghty, correct?

22 A. Sometime around then, yes.

23 Q. Okay. And this may refresh your
24 recollection. I believe this was exhibit -- was it
25 Exhibit J last time, the draft? This has previously

1 been, just for the record -- if I can have just a
2 moment. Is it J?

3 A. K.

4 Q. K. If you can refresh your recollection
5 with Exhibit K.

6 A. Yes.

7 Q. So as previously testified to, you drafted
8 Mr. Geraghty, requesting that he cancel the contract
9 because you believed it was illegal under
10 AS 36.30.083. Is that correct?

11 A. Asked and answered, but I don't believe
12 that letter was sent.

13 Q. So you never sent the letter, correct?

14 A. I don't believe so.

15 Q. Okay. I'm going to ask you to take a look
16 at a short version of that letter that was provided
17 in discovery. And I think -- are we on Exhibit D
18 now?

19 THE REPORTER: E.

20 MR. ROBINSON: E. I will mark the following
21 as Exhibit E.

22 (Exhibit E marked.)

23 BY MR. ROBINSON:

24 Q. Is this also a letter that you began to
25 draft on October 30th, 2013, Exhibit E?

1 A. I think it's probably a prior version of
2 it, the letter.

3 Q. Okay. So this draft, you indicated that:
4 "I am the owner of the Alaska Building..."

5 You changed it in the follow-up draft that:
6 "I represent Alaska Building, Inc."

7 Is that sort of the fundamental change in
8 that first paragraph, comparing the two?

9 A. Well, you know, there's -- I mean, this was
10 obviously just the very start. I mean --

11 Q. Sure.

12 A. It just trails off -- I mean, I think there
13 are, what, one and a half sentences. So it says --
14 it ends "to make way for," and then just trails off,
15 so it was just the very beginning.

16 So, you know, to say the fundamental
17 difference, I mean, there's hardly anything in this
18 letter. This did -- was on Alaska Building, Inc.
19 letterhead, and the later one was on Law Office
20 letterhead.

21 Q. And you didn't send either letter, correct?

22 A. I don't believe so.

23 Q. Okay. And you copied -- if you were
24 presumably going to send the letter, you copied the
25 media, right?

1 A. Yeah. But I didn't send it.

2 Q. Sure. I'm just asking you if you copied
3 it -- if you had sent it, if you had gone forth and
4 sent the letter, you intended --

5 A. You know, it speaks for itself, but as --
6 the media is listed as a CC.

7 Q. Okay. On the 30th of October, while you're
8 e-mailing Mr. McClintock, threatening to launch the
9 grenade, and drafting letters to the Attorney
10 General that you never sent, you actually entered
11 into an indemnity agreement regarding relocation of
12 the gas line and gas meter, correct?

13 A. I don't recall what day. Was it the same
14 day?

15 Q. Yeah. I'm going to provide you with
16 Exhibit F.

17 A. Yeah. One of the things that was going on
18 was Pfeffer had said they were just going to cut off
19 the gas to my building.

20 (Exhibit F marked.)

21 BY MR. ROBINSON:

22 Q. So we're on Exhibit F. Page 2, is that
23 your signature Mr. Gottstein, on page 2?

24 A. Yes. It's an electronic signature.

25 Q. And the date, please?

1 A. October 30th, 2013.

2 Q. Were you provided also with the certificate
3 of insurance, certificate of liability insurance?
4 And we're on page 4 here.

5 A. Yeah, it looks like it. Yeah, I believe
6 so.

7 Q. And you were the certificate holder,
8 correct, or the Alaska Building was the certificate
9 holder, correct?

10 A. Do you want to point me to where Alaska
11 Building is referenced?

12 Q. Sure. On the first page of the
13 certificate, the bottom left corner.

14 A. Oh, okay.

15 Q. In fact, on the 29th, did you, throughout
16 this process, inform your tenants what was happening
17 with respect to construction efforts?

18 A. I tried to keep them informed.

19 Q. Did you specifically share with them, and
20 if so, when, that the lease was illegal and
21 construction shouldn't go forward?

22 A. I don't recall.

23 Q. Did you hold a meeting at any point with
24 any of your tenants saying that you reviewed the
25 statute, you understood that the lease was illegal,

1 and therefore they could have liability ultimately
2 if the lease was -- was there a meeting generally
3 with your tenants to discuss what you had uncovered
4 after reading the statute?

5 A. I never had a meeting with the tenants. I
6 would issue memos, and I met, talked to different
7 tenants at different times.

8 MR. ROBINSON: I'm going to mark as
9 Exhibit G, Mr. Gottstein...

10 (Exhibit G marked.)

11 BY MR. ROBINSON:

12 Q. Do you recall writing this memo,
13 Mr. Gottstein?

14 A. Yes.

15 Q. And the date?

16 A. Yes.

17 Q. What's the date?

18 A. It says October 29th, 2013.

19 Q. Okay. And you had previously written your
20 tenants a memo on October 10th, 2013?

21 A. Yes. Yeah, I assume so.

22 Q. What was the nature of this memo? I'm
23 referring to one and two on page 1.

24 A. Well, the big concern was the threat to
25 just turn off gas to the Alaska Building in the

1 middle of winter.

2 Q. So you wanted the developer to provide
3 written assurances that any costs or damages caused
4 to Alaska Building and its tenants would be
5 reimbursed by the project, correct?

6 A. Yeah.

7 Q. And that the project wouldn't irreparably
8 damage the building, right?

9 A. Yes.

10 Q. And this one specifically dealt with the
11 "gas meter removal" issue, right? And that's
12 reflected in the last paragraph?

13 A. Well, the document speaks for itself.

14 Q. Would you agree with me that you received
15 those assurances when you entered into the indemnity
16 agreement on the 30th?

17 A. No.

18 Q. And that was your signature on the
19 10/30 document?

20 A. Well, yeah. This was specifically about
21 moving the gas -- the gas line. It had nothing to
22 do with the larger issues.

23 Q. Right. But to be clear, you've never
24 raised an issue that there was somehow negligence or
25 whatever in the removal of the gas line?

1 A. Well, there were problems that resulted
2 from it. I mean, my -- the boiler went off a couple
3 times, and the rooftop units had some problems.

4 Q. As part of this lawsuit, that claim has
5 never been raised, right?

6 A. No.

7 Q. Would you agree with me that 716, or the
8 developer, was making good faith efforts to discuss
9 the construction project with you and the other
10 neighbors of the building?

11 A. I wouldn't necessarily characterize it as
12 good faith.

13 Q. What would you characterize it as?

14 A. Public relations.

15 Q. Willing to meet with people who possibly
16 could be affected by the construction, right?

17 A. Yeah. I mean, they would, you know, invite
18 people and give them pizza. So, yeah, they had
19 meetings with people to -- as part of their public
20 relations effort.

21 MR. ROBINSON: I'm going to just provide an
22 example of that. And I think we cut -- are we at H, I
23 and J there?

24 THE WITNESS: I have got G.

25 THE REPORTER: I, J and K.

1 THE WITNESS: So I'm going to do H. The next
2 exhibit is Exhibit H.

3 (Exhibit H marked.)

4 THE WITNESS: This is H?

5 BY MR. ROBINSON:

6 Q. Yes. And what we're looking at,
7 Mr. Gottstein, fair to say, is an e-mail from Amy
8 Slinker, from Pfeffer Development, to you and to
9 others requesting sort of a "meet and greet"
10 question/answer session regarding the LIO project,
11 right?

12 A. Well, I wouldn't characterize it that way,
13 but the document speaks for itself.

14 Q. You would agree with me that you were
15 invited to that meeting, correct, and the meeting
16 was to take place on November 15th, 2013?

17 A. The document speaks for itself. I mean,
18 I -- yeah, I suppose it could be read -- I suppose
19 it's an invitation.

20 Q. I want to move back a little bit.

21 We're going to do the next exhibit L. I will
22 pass it out.

23 (Exhibit L marked.)

24 BY MR. ROBINSON:

25 Q. Okay. So are you familiar with this,

1 Mr. Gottstein?

2 A. There's an underlining that I don't think I
3 put on there.

4 Q. You didn't.

5 A. So this is what? L?

6 THE REPORTER: Yes.

7 BY MR. ROBINSON:

8 Q. Does the text of the memo ring a bell? Did
9 you write this?

10 A. Yes.

11 Q. So at this point, you had already entered
12 into the indemnification agreement regarding the gas
13 relocation, correct?

14 A. I think so, yes.

15 Q. Because you had admitted that you signed
16 that particular agreement; were issued an insurance
17 certificate on the 30th of October, right?

18 A. I agreed that I signed it.

19 Q. And so just, at this point, you're
20 informing your tenants about future demolition and
21 generally the nature of what you understand the
22 project to be. Is that fair to say?

23 A. Yes.

24 Q. And that --

25 A. And the document speaks for itself.

1 Q. Okay. That document was dated
2 November 8th, 2013, right?

3 A. Yes.

4 Q. And you'd agree with me that the next
5 several weeks you exchanged with Ms. Windt, from my
6 law firm, numerous drafts of an "Access, Indemnity,
7 and Insurance Agreement" regarding the construction,
8 correct?

9 A. It ended up being titled that. I'm not
10 sure that it started out being titled that.

11 Q. But that's a fair statement, that you
12 exchanged several drafts of an agreement, correct?

13 A. Yes.

14 Q. Would you agree with me that there was at
15 least an agreement in principle by December 5th,
16 2013?

17 A. I think that's correct.

18 MR. ROBINSON: Okay. So I'm going to pass
19 the next exhibit -- I believe it's M. And then I'm
20 going to ask to take a break to use the restroom. I
21 apologize.

22 (Exhibit M marked.)

23 BY MR. ROBINSON:

24 Q. And if you could just review these e-mails
25 briefly, Mr. Gottstein.

1 A. Uh-huh.

2 Q. Okay. So on the 5th -- certainly by the
3 5th of December, 2013, there had been and an
4 agreement in principle. There is a discussion about
5 Criterion's space lease and other -- and other
6 checks that you would receive, right, at least by
7 the 5th of December?

8 You had --

9 A. Yes.

10 Q. -- approved of the language in the drafts
11 that had been exchanged between the parties --

12 A. Yeah.

13 Q. -- at that point?

14 MR. ROBINSON: Thanks. I'm going to ask to
15 take a break and go off record for about five minutes.

16 (Recess taken.)

17 MR. ROBINSON: We can go back on record.

18 Q. So agreement in principle,
19 Mr. Gottstein, at least by December 5th, 2013, and
20 the agreement is executed on the 6th of December,
21 2013, right?

22 A. Yeah. The agreement was signed on the 6th.

23 Q. Okay. And we're referring to the "Access,
24 Indemnity, and Insurance Agreement," right?

25 A. Yeah. I always felt that was a weird

1 title, but that's what it is.

2 Q. Fine. And that was between 716 West Fourth
3 Avenue LLC and the Alaska Building, right?

4 A. Yes. Or Alaska Building, Inc.

5 MR. ROBINSON: Okay. I'll mark that as
6 Exhibit N and hand out a copy.

7 (Exhibit N marked.)

8 BY MR. ROBINSON:

9 Q. Is there any provision in this agreement
10 that indicates that you believed that the lease was
11 illegal?

12 A. No. And note that I -- for the record,
13 that I chuckled.

14 Q. Did you still have the concerns about the
15 illegality of the lease when you entered this
16 agreement?

17 A. Yes.

18 Q. You'd admit that you were compensated quite
19 well as a result of this agreement?

20 A. No. I admit that -- or I -- I was
21 compensated for actual damages -- or costs.

22 Q. We'll go through the compensation records.
23 You'd agree with me that, as part of this agreement,
24 you knew that the Empress Theater, as you refer to
25 it, the old Empress Theater, would be demolished in

1 connection with the project, right?

2 A. Yes.

3 Q. And what was your intention in entering
4 this agreement?

5 A. To be made whole; for Alaska Building, Inc.
6 to be made whole or not suffer any loss as a result
7 of the project.

8 Q. Were you issued an insurance certificate as
9 a part of this agreement?

10 A. Yeah, I believe so.

11 Q. Okay. I want to talk about the
12 compensation that you received as part of this
13 agreement.

14 Is this N or O, the --

15 A. N.

16 MR. ROBINSON: We can move on to O. I'm
17 going to mark as Exhibit O -- and I believe this is
18 your summary, Mr. Gottstein, of the agreement.

19 (Exhibit O marked.)

20 THE WITNESS: No, I don't think so.

21 BY MR. ROBINSON:

22 Q. No. Okay.

23 A. I think it's Rebecca's.

24 Q. Fair to say -- let's break down the first
25 portion. Is that an accurate accounting of the

1 amount of money you received as part of the
2 agreement?

3 A. I don't think so.

4 Q. You were compensated \$15,000, in fact, for
5 professional fees, right?

6 A. I think that's correct.

7 Q. That's correct, right?

8 And you were compensated -- and who
9 compensated you for that?

10 A. 716 LLC, I -- well, I'm not sure. I -- I
11 certainly produced the copies of the checks. I
12 think it was 716.

13 Q. Okay. And I'm going to refer you -- why
14 don't we move on to the next exhibit, which contains
15 the checks. And maybe it will make it easier to
16 track. I'm going to mark it as Exhibit P. It's a
17 payment summary and a copy of checks issued to you,
18 issued to ABI.

19 Exhibit P.

20 (Exhibit P marked.)

21 BY MR. ROBINSON:

22 Q. On the second page of Exhibit P, you'd
23 agree with me that a check was issued to you on
24 December 5th, 2013, in the amount of \$15,000?

25 A. The check was issued to Alaska Building,

1 Inc.

2 Q. Alaska Building, Inc. and in the amount of
3 \$15,000?

4 A. Yes.

5 Q. And that was for professional fees that you
6 personally incurred in preparing for the project,
7 correct?

8 A. Well, that Alaska Building, Inc. incurred.

9 Q. So those weren't fees that you personally
10 incurred as a lawyer and president, sole member
11 of --

12 A. Well, some of it was Law Office billings to
13 Alaska Building, Inc.

14 Q. You'd also agree with me -- and we are on
15 the third page of Exhibit P -- that you were
16 issued -- excuse me -- Alaska Building, Inc. was
17 issued a check for \$10,000? And that had to do with
18 access to the Alaska Building servers during the
19 construction project, more or less?

20 A. No. It was to provide for offsite
21 mirroring of data.

22 Q. You accepted that check?

23 A. Yes.

24 Q. If you can go to the next page,
25 Mr. Gottstein. There's a check in the amount of

1 \$3,900?

2 A. Yes.

3 Q. What was that check for?

4 A. I think it was for parking, for using a
5 parking spot.

6 Q. Was that in the alley?

7 A. Yes.

8 Q. If you can go to the next page, please.
9 Jim Gottstein personally was compensated, in
10 addition, \$2,000 as part of the agreement, correct?

11 A. Well, I wouldn't necessarily say
12 additional. I received a check for 2,000 --

13 Q. As a rent agreement payment, right?

14 A. Yeah, to move across the hall.

15 Q. So you moved, from your office, across the
16 hall because your office abutted the party wall,
17 right, the old Empress Building?

18 A. The one wall -- the wall that my desk was
19 on, or the credenza, actually was -- is the party
20 wall.

21 Q. You were compensated \$2,000 to move your
22 office across the hall during -- how long did your
23 office remain across the hall? When did you move
24 back into your original office?

25 A. I'm not sure, but maybe by April or May of

1 2014.

2 Q. Did Criterion, the general contractor on
3 the project, issue you a check on December 4th,
4 2013, in the amount of \$10,000 for space lease?
5 And, I mean, Alaska Building.

6 A. For how much?

7 Q. \$10,000.

8 A. No.

9 MR. ROBINSON: I'm going to mark this as
10 Exhibit Q. Excuse me. \$14,400.

11 THE WITNESS: Right.

12 MR. ROBINSON: I appreciate your attention to
13 detail.

14 (Exhibit Q marked.)

15 THE WITNESS: Well, you're going to -- you
16 know, whatever I do, you're going to throw up, in my
17 face, whatever I say.

18 BY MR. ROBINSON:

19 Q. Did you receive a letter from Dave
20 DeRoberts, the project manager, on December 4th,
21 indicating that he had enclosed a check in the
22 amount of \$14,400 for the period of January 1st,
23 2014, through December 31st, 2014?

24 A. Yes.

25 Q. So the general contractor of the project

1 maintained its offices in your building while the
2 project was ongoing?

3 A. Yeah. I mean, this was asked and answered
4 last time, but yes.

5 Q. Did you have any concerns accepting over
6 \$40,000 in payment, given your awareness that the
7 lease was, in your opinion, illegal?

8 A. Not at all.

9 Q. Help me understand that.

10 A. Well, again, I just didn't see why Alaska
11 Building, Inc. should suffer costs and damages as a
12 result of this -- this project, and that certainly
13 didn't change because the lease was illegal.

14 Q. You had tenants in your building sign
15 waivers and accept checks for compensation during
16 the project as well, correct?

17 A. No.

18 Q. Explain.

19 A. What's the question?

20 Q. Did tenants of your building accept checks
21 and sign waivers as part of the construction
22 project?

23 A. Some of them did, yes.

24 Q. Okay. Which ones?

25 A. Well, Blu MensWear, which was basically

1 constructively evicted by the project; Partners for
2 Progress, I believe; and Alaska Center for the
3 Environment, which may have had a different name.
4 That's one of their arms. And all of those tenant
5 spaces shared the party -- well, yeah, shared the
6 party wall.

7 Q. I'm going to hand out now Exhibits R and S,
8 reflecting the --

9 A. There may have -- there may have been --

10 Q. Sure.

11 A. -- another one or two. I don't know.

12 Q. We can go over those.

13 We're going to go through R and S, the tenant
14 waivers and checks dated one -- I believe the checks
15 are dated 1/9/14, and the waivers were signed on the
16 6th.

17 (Exhibit R marked.)

18 THE WITNESS: This is R?

19 BY MR. ROBINSON:

20 Q. Yes. And just to be clear, you did ask
21 Criterion to provide you with a certificate of
22 insurance prior to commencement of construction, and
23 that was provided to you as previously admitted,
24 right?

25 A. I believe so.

1 MR. ROBINSON: Okay. That's R. And then I'm
2 going to pass out S simultaneously.

3 (Exhibit S marked.)

4 BY MR. ROBINSON:

5 Q. Have you seen those waivers before,
6 Mr. Gottstein?

7 A. Yes, I believe so.

8 Q. And so what tenants in your building
9 received payment as part of the --

10 A. Well, these are Partners for Progress and
11 Alaska Center for the Environment. I thought that
12 Blu MensWear also got some compensation.

13 Q. Did you ever advise your tenants, prior to
14 accepting this money, that you believe that the
15 lease was illegal and you had contemplated a
16 preliminary injunction?

17 A. I don't recall. It's possible.

18 Q. If it's possible, who would you have
19 communicated that to, which tenant?

20 A. Partners for Progress.

21 Q. Who at Partners for Progress?

22 A. Claire Waddoup.

23 Q. Can I have her name please? Spell it.

24 A. C-l-a-i-r-e. I think it's W-a-d-d-r-o-p,
25 something like that.

1 Q. Do you remember the nature of that
2 conversation when you had it?

3 A. Just how outrageous the lease was.

4 Q. Was she aware of the specific payments that
5 you received as part of the project?

6 A. I don't know.

7 Q. Were any of your tenants informed of the
8 excess of \$40,000 that you received as part of the
9 agreement?

10 A. That Alaska Building, Inc. received?

11 Q. Sure.

12 A. I generally -- I think I generally, you
13 know, told them that I was trying to get
14 compensation for my costs.

15 Q. You never filed an injunction against
16 commencement of the project while it was ongoing,
17 did you?

18 A. No.

19 Q. Okay. Describe any specific legal efforts
20 you made to stop the LIO project from moving forward
21 after construction began.

22 A. I didn't. Well -- well, until I filed
23 suit, the current suit, for which this deposition is
24 being held.

25 Q. Okay. You'd agree with me for --

1 A. And that was after construction started.

2 Q. After construction ended, you filed suit,
3 right?

4 A. Yes.

5 Q. Okay. Would you agree with me that on
6 January 23rd, 2015, you e-mailed Mr. Pfeffer a claim
7 for damage that you allege had been done to your
8 building during construction?

9 A. I think it was -- do you have that exhibit,
10 because --

11 Q. I do. And I'll pass it out.

12 A. Yeah. I think there were --

13 MR. ROBINSON: Where are we now? Are we on
14 T?

15 THE REPORTER: Yes.

16 MR. ROBINSON: This is Exhibit T.

17 THE WITNESS: There were other -- I think I
18 included Mr. DeRoberts as well.

19 MR. ROBINSON: And that is true. I'm going
20 to pass this out. Exhibit T.

21 (Exhibit T marked.)

22 THE WITNESS: And Bob O'Neill.

23 BY MR. ROBINSON:

24 Q. And Mr. O'Neill is an engineer for Pfeffer
25 Development, correct?

1 A. My understanding was that he was a project
2 manager for --

3 Q. Sure. And he was.

4 A. And this -- I notice that this starts at
5 page 2.

6 Q. Right.

7 A. And it doesn't have the claim attached.

8 Q. Okay. I'm going to pass out the claim.
9 You can read that. And that's Exhibit U.

10 (Exhibit U marked.)

11 BY MR. ROBINSON:

12 Q. Fair to say that you e-mailed
13 Mr. DeRoberts, Mr. Gottstein, Mr. O'Neill and then
14 Dennis Berry, your engineer, this document on the
15 23rd of January, 2015? This is U.

16 A. This doesn't have a date on it.

17 Q. Okay. If you can look at Exhibit U and let
18 me know if it reflects what you refer to as the
19 claim. What's the date of the claim in Exhibit U?

20 A. January 23rd, 2015.

21 Q. And Exhibit T says: Please find attached
22 the claim for damages to Alaska Building as a result
23 of your LIO --

24 A. Yeah. I think this was attached.

25 Q. Okay. So you, in fact, e-mailed

1 Mr. DeRoberts and Mr. Pfeffer and Mr. O'Neill and
2 Dennis Berry. And just briefly, if you can explain
3 your relationship with Mr. Berry. What work did
4 Mr. Berry do during the project?

5 A. He was my consulting engineer.

6 Q. So he consulted on the party wall?

7 A. (Witness nods head.)

8 Q. Yes?

9 A. Yes.

10 Q. Okay. And the \$250,000 claim was his
11 estimate of damage to your building, correct?

12 A. The document speaks for itself, that the
13 \$250,000 claimed is reasonable.

14 Q. In this claim, Mr. Gottstein, dated
15 January 23rd, 2015 -- and feel free to review it
16 thoroughly -- did you ever make a claim that the
17 lease itself was illegal?

18 A. No.

19 Q. When you sent this, did you expect to be
20 compensated by 716 or Criterion or both in the full
21 amount as recommended by Mr. Berry?

22 A. I don't know that I expected it. I -- it
23 would have been the right thing to do.

24 Q. And if you had been compensated in that
25 amount on that date, you never would have brought

1 the lease claim, would you have?

2 A. Probably not.

3 Q. At some point did you send a claim to
4 Sandra Heiden?

5 A. I believe so, yes.

6 Q. A claims adjuster for Navigators Insurance
7 who was the insurer for Criterion?

8 A. Yeah. After it was ignored for a long
9 time, then Ms. Windt -- I asked who it was and
10 basically got the runaround. And finally found out
11 she was involved, and sent it to her.

12 Q. So let's talk about that. After you
13 submitted your claim on January 23rd, 2015, you
14 believe that your claim was ignored by Criterion, by
15 716, correct?

16 A. Well, it had -- there was no response to
17 it. I don't know that -- there was no response to
18 it, to me.

19 Q. You had previously admitted that on
20 March 28th, 2015, you read an article in the
21 Anchorage Daily News that expressed skepticism about
22 the lease, right?

23 Let me refresh your recollection. Let's mark
24 this as Exhibit V. And take a moment to review it.

25 (Exhibit V marked.)

1 MR. ROBINSON: Sorry, Kevin.

2 THE WITNESS: Could you read the question
3 back, please?

4 (Record read.)

5 THE WITNESS: I don't -- I don't understand
6 the skepticism characterization so --

7 BY MR. ROBINSON:

8 Q. Let me ask you a question. You've read
9 this article when it was published in the Alaska
10 Dispatch News on March 28th, 2015, right?

11 A. I believe so.

12 Q. Okay. And fair to say that this article
13 discusses potential cuts or frustrations with the
14 amount being paid for the lease?

15 A. Well, you know, I think the document speaks
16 for itself. I don't really want to characterize it.

17 Q. What was your reaction when you read this
18 letter -- article -- excuse me -- on the 28th, 2015?
19 March 28th. Excuse me.

20 A. Well, I thought it was certainly
21 interesting.

22 Q. What else?

23 A. I don't know.

24 Q. Three days after Mr. Herz published this
25 article -- or the Alaska Dispatch News published

1 this article, you filed a complaint, right?

2 A. Yes.

3 Q. March 31st --

4 A. I believe --

5 Q. -- 2015, right?

6 A. -- that's correct.

7 Q. Right?

8 And you e-mailed Lisa Demer, from the Alaska
9 Dispatch News, a copy of your complaint?

10 A. I believe so.

11 Q. And you were interviewed by Ms. Demer for
12 an article that came out on March 31st, 2015,
13 correct?

14 A. That sounds right.

15 MR. ROBINSON: Where are we right now?

16 THE REPORTER: W.

17 MR. ROBINSON: W. Excuse me. Pass out
18 Exhibit W.

19 (Exhibit W marked.)

20 THE WITNESS: I'd really want to state my
21 objection that I don't think any of this -- these
22 questions are relevant to this lawsuit brought on
23 behalf of the citizens of Alaska.

24 BY MR. ROBINSON:

25 Q. You were quoted in this article,

1 Mr. Gottstein, when asked about the suit. One of
2 the purposes was just to say: Look, everybody is
3 complaining about this thing, and it's illegal.
4 Right?

5 A. Yes.

6 Q. Were you prompted to say that, in part,
7 based on what you had read three days earlier in the
8 Alaska Dispatch News?

9 A. Well, I don't know about prompted. I mean,
10 I felt like everybody was complaining about -- or,
11 you know, there were lots of complaints about it,
12 and nobody -- nobody was doing anything about it.

13 Q. And you hadn't received, by the 31st, of
14 course, any payment from either Criterion or 716
15 regarding your claim for damage, right?

16 A. Correct.

17 Q. Mr. Gottstein, on April 14th, 2015 -- and
18 we discussed this a bit last time -- there was an
19 inspection, by a structural engineer hired by
20 Criterion, of your building, correct?

21 A. If that's the date.

22 Q. Yeah. And I will pass this out.

23 This is Exhibit X.

24 (Exhibit X marked.)

25 BY MR. ROBINSON:

1 Q. Does this ring a bell?

2 A. So, I mean, this was something, I guess,
3 that I sent -- or you sent to Heidi Wyckoff
4 yesterday.

5 Q. Yeah. That's my -- just for the record,
6 that's my legal assistant who printed this e-mail.
7 But the e-mail, in fact -- it's a chain between Mark
8 Scheer, a lawyer for Criterion, you and me arranging
9 a time to conduct the inspection, correct?

10 A. Yes.

11 Q. Okay. And so that took place on April 14,
12 2015?

13 A. Yeah, I think so.

14 Q. Okay. And, again, the purpose for the
15 inspection, I guess generally, was for Criterion to
16 get a sense of the damage to your building and
17 hopefully for you to be compensated for damage done
18 during the process, right?

19 A. Well, the purpose was for their engineer to
20 inspect the building. I mean, I certainly wanted
21 Alaska Building to be compensated for its damage as
22 a result.

23 Q. You and I met after that inspection, right?

24 A. Yes.

25 Q. Okay. And you recall telling me that the

1 only reason you brought the lease claim was so that
2 you could be paid for property damage?

3 A. I don't think that's accurate.

4 Q. Okay. What's accurate?

5 A. I think that I -- well, that I wouldn't
6 have brought the illegal lease claim if I had been
7 compensated, but I don't recall saying that that's
8 the only reason why I brought the illegal lease
9 claim.

10 Q. So just to be very clear, had you been
11 compensated \$250,000 by March 31st, you never would
12 have raised the illegality of the lease claim in a
13 filing, in a lawsuit?

14 A. I think that's right. In fact, I -- I
15 gave -- sent Ms. Windt a copy of the copy of the
16 draft complaint, that included the illegality of the
17 lease, and pointed out that that was in there. So
18 yes.

19 Q. And now you're claiming to carry on the
20 torch for the citizens of Alaska in challenging this
21 lease, right?

22 A. Yeah. I mean, you offered to settle the
23 damages claim if I dropped the illegal lease claim,
24 and I said, no, it's too late for that.

25 Q. I guess my question is: Do you feel

1 qualified, given your previous indication that you
2 wanted to be paid purely for property damage, to be
3 the public face of this challenge?

4 A. You know, I'd be happy if someone else did.
5 I think that the Attorney General's Office should --
6 should step in and should have stepped in. I think
7 the Legislative Affairs Agency should recognize that
8 the lease is illegal, and I think the legislature
9 should stop appropriating money for it.

10 Q. And you admit that 17 months, roughly 16 to
11 17 months after you knew about what you claimed to
12 be the illegality, you waited till far after
13 construction ended to bring the suit, right?

14 A. Well, I wouldn't say it was far after
15 construction ended.

16 Q. Three months?

17 A. Yeah.

18 Q. Two or three months after.

19 Do you generally feel like you've acted in
20 good faith in bringing this claim?

21 A. Absolutely.

22 Q. You don't think that this lawsuit is in any
23 way an extortion attempt, to some degree?

24 A. No.

25 Q. Even bringing the qui tam action?

1 A. No. I think it's completely fair.

2 Q. Do you feel it would be fair to deprive the
3 citizens of Alaska an additional 2.1 million of the
4 21 million you feel would be paid back?

5 A. You know, that's such a weird way to look
6 at it because, you know, here you are trying to keep
7 your client receiving \$21 million over -- or about
8 \$21 million over what's allowed by law, even leaving
9 aside the issue that it does not extend the real
10 property lease, and I'm trying to get \$19 million --
11 well, \$21 million, whatever it is, back, and then --
12 but take a 10 percent fee for that, which I think is
13 quite reasonable.

14 So it's not like I'm depriving the State from
15 2 million. It's that I'm trying to get the State
16 19 million.

17 Q. Mr. Gottstein, on May 1st, 2015, you sent
18 an open letter to Governor Walker.

19 I'm going to mark this as Exhibit Y.

20 (Exhibit Y marked.)

21 BY MR. ROBINSON:

22 Q. You copied, at the time, Attorney General
23 Mr. Richards, Craig Richards, on this e-mail?

24 A. Yes.

25 Q. And you posted it on the website?

1 A. Yes.

2 Q. And in this letter, you encouraged the
3 Governor veto the fiscal year 2016 appropriations
4 for the Anchorage LIO, or at least reduce it to what
5 you believe was a fair value of 104,310 per month?

6 A. Yes.

7 Q. Okay. You also encouraged the Governor to
8 encourage the Attorney General to investigate some
9 unknown entity to determine whether someone has
10 committed a crime in violation of AS 36.30.930(2),
11 right?

12 A. Yes.

13 Q. Okay. And that's a Class C felony offense,
14 right?

15 A. I believe so.

16 Q. And you indicated in the letter that you
17 weren't sure who was guilty of this crime, but
18 someone had to be guilty of this crime, right?

19 A. Well, the document speaks for itself. It
20 says that a crime appears to have been committed,
21 and I don't know who's guilty of this crime.

22 Q. Mr. Gottstein, you provided to 716 about a
23 week ago, on 10/16/2015, your responses to requests
24 for production, right?

25 A. Yes.

1 MR. ROBINSON: Okay. I'm going to mark the
2 next exhibit as Z. Are we on Z?

3 THE REPORTER: Yes.

4 MR. ROBINSON: And there are two parts to it.

5 (Exhibit Z marked.)

6 BY MR. ROBINSON:

7 Q. So you researched -- fair to say, on
8 October 28th, 2013, you researched whether a lawyer
9 can make, in a civil suit, a threat of criminal
10 prosecution against another party, right?

11 A. What date?

12 Q. October 28th, 2013. And that's reflected
13 in your discovery log as part of this exhibit,
14 Mr. Gottstein. And I'm going to refer --

15 A. I'm sorry. What did you say?
16 October 28th?

17 Q. Yes.

18 A. Oh.

19 Q. Right?

20 A. Oh. Well --

21 Q. That's the date that you researched the
22 civil and criminal penalties for violating the
23 statute, right?

24 A. Well, I think this says October 24th,
25 doesn't it?

1 Q. Yes. Excuse me. October 24, 2013. You
2 reviewed the Alaska Bar Association Ethics Opinion
3 No. 97-2, right?

4 A. Yes.

5 Q. And, in fact, on page 3 of that opinion --
6 is it page 3? -- page 2 of that opinion, it says a
7 lawyer -- you highlighted: A lawyer who threatens
8 criminal prosecution, without any actual intent to
9 so proceed would violate this ethical rule. Right?

10 You highlighted that in the discovery
11 about --

12 A. I don't know. It's not highlighted on
13 this.

14 Q. In the discovery that you provided me, and
15 I would be happy to provide, after we break, the
16 original, you'd agree with me that it contained --
17 within this opinion is that assertion, correct?

18 A. Where is that?

19 Q. "A lawyer" on page 2, second page. "A
20 lawyer who threatens criminal prosecution, without
21 any actual intent to so proceed would violate this
22 rule."

23 A. Yeah. I think it says "a lawyer," but,
24 yeah, go ahead.

25 Q. Sure. And so this was -- you researched

1 this in October 24th, 2013, right? And you vaguely,
2 in e-mails to Mr. McClintock around the 25th, 28th,
3 30th of October, mentioned that you were going to
4 write the Attorney General at that time, indicating
5 that someone had committed a crime. Right?

6 A. Yes.

7 Q. But you never sent the letter to the
8 Attorney General at that time?

9 A. Right.

10 Q. You waited, in fact, until May of 2015 to
11 get in touch with the Governor and the Attorney
12 General again and accuse someone of committing a
13 Class C felony offense, right?

14 A. No. I don't think that's -- I -- I had
15 written -- e-mailed the Attorney General when I
16 filed the suit.

17 Q. Okay.

18 A. I don't recall if I mentioned the crime.

19 Q. So in the copy of the lawsuit that you
20 filed on 3/31/13, you never indicated -- you never
21 raised the claim that there was a criminal violation
22 worthy of prosecution of a Class C felony, right?

23 A. In what?

24 Q. In your complaint that you e-mailed to the
25 Governor or the Attorney General on March 31st,

1 2013, you never raised that, correct?

2 A. No, because private citizens don't get to
3 bring criminal charges.

4 Q. So you waited until May 2015 in this letter
5 to the Governor. That's a pretty serious accusation
6 you're making, isn't it, Mr. Gottstein, that some
7 unknown entities should be prosecuted for a Class C
8 felony offense, right?

9 A. I think it is.

10 Q. And that crime is punishable up to five
11 years in prison, right?

12 A. I don't know. If you say so.

13 Q. And still, to this day, you don't know who
14 should be prosecuted for this crime or who's
15 involved in this corruption. These are general
16 terms that you threw out in a letter to the Governor
17 and the Attorney General?

18 A. I've been hesitant to name particular
19 people.

20 Q. On the May 1st, 2015, letter to the
21 Governor and the Attorney General, you didn't name
22 one?

23 A. Correct.

24 Q. If you believe that there was corruption
25 involved in this process because the lease was

1 illegal, as you claimed you knew in early
2 October 2013, why didn't you alert the Attorney
3 General then or while construction was ongoing that
4 they should initiate a criminal prosecution? Help
5 me understand that.

6 A. I was concerned that it would have serious
7 repercussions to the Alaska -- the Alaska Building,
8 that the construction would not be as concerned
9 about preventing damage to the Alaska Building.

10 Q. If the Attorney General had taken your
11 concern seriously and arrested or investigated
12 entities involved in the formation of the lease, or
13 if you had filed an injunction to stop the project,
14 wouldn't that have benefited the Alaska Building?

15 A. Well, the problem is, is that -- as this
16 situation demonstrates, is that the politics is such
17 that even blatant illegalities like this are ignored
18 by the powers that be.

19 Q. Who are the powers that be?

20 A. The Attorney General, for one. In this
21 case -- well, the Governor certainly never -- didn't
22 line-item veto that appropriation. It's hard -- at
23 that specific time, they were dealing with this
24 \$3.5 billion deficit in a special session, so -- and
25 that was during the window that he could have

1 line-item vetoed it. I can kind of understand why
2 he wouldn't want to take that on. He has never
3 responded to this letter.

4 So, I mean, I think it's just kind of
5 illustrative of the "looking the other way"
6 environment that officials have to corruption in
7 Alaska.

8 Q. I don't know if you're specifically --
9 maybe I phrased it wrong. You researched the ethics
10 of threatening criminal prosecution and the criminal
11 penalty in October of 2013, right?

12 A. Right.

13 Q. And you claimed then that you had, by that
14 time, of course, reviewed and come to the
15 understanding that the lease was illegal in
16 violation of AS 36.30.083, right? You've made those
17 conclusions, both, as of October 2013, right?

18 A. Yes.

19 Q. And you never did anything about it. You
20 never initiated -- you never let the Governor know
21 that there should be an investigation, or the
22 Attorney General; you never let the courts know that
23 the project should be stopped. And both of those
24 things, if you had believed them to be true, would
25 have benefited Alaska Building, if the project

1 hadn't gone forward, right? If you sincerely held
2 those beliefs --

3 A. I don't know that it would have helped the
4 Alaska Building. I think it was important, you
5 know, to the State. But, again, I -- I had great
6 concerns about basically retaliatory damage to the
7 Alaska Building.

8 Q. So help me understand that. What claim
9 have you made that anyone involved in this project
10 was somehow going to retaliate against you for
11 raising a fuss about the lease? You've never made
12 that allegation in a complaint.

13 A. No. I didn't make the allegation in my
14 complaint. That doesn't mean it wasn't a concern.
15 It was my concern, and that's the reason why I
16 didn't do it.

17 Q. You just had a general concern that
18 somehow these -- and you'd agree with me that the
19 communications that we read, at least regarding 716
20 and Pfeffer Development, is Mr. McClintock
21 suggesting that they were sensitive to your
22 concerns, they wanted to meet with you, this was an
23 ongoing discussion, and you entered into a contract
24 with them?

25 A. Well, you know, as 716's lawyer,

1 Mr. McClintock made that statement. At the same
2 time, he knew, from correspondence back in June or
3 July of 2013, that the lease extension was not
4 really proper under AS 36.30.083(a). So just the
5 fact that he said that didn't make it so.

6 And, you know, my experience, my personal
7 experience was they were very dismissive of my
8 concerns. And that occurred -- that happened all
9 throughout the project. And that I -- you know, I had
10 my engineer, and we were trying to have them take more
11 care of the wall than they had planned to, and we were
12 partially successful with that. And I was very
13 concerned that if I had raised a ruckus about it,
14 that -- that they would quit taking care of the party
15 wall.

16 Q. As of October 24th, 2013, before the
17 agreement was ultimately executed, when you, by that
18 time, knew that there should be a criminal
19 investigation or that the lease was illegal, you
20 still tried to negotiate for yourself a \$10 million
21 purchase option should the construction result in
22 damage to your building, right?

23 A. Catastrophic damage. And, again, that was
24 to provide an incentive to the developer to make
25 damn sure that the Alaska Building was not damaged

1 because -- you know. And obviously I didn't get
2 that provision.

3 Q. I want to ask some questions about your
4 preliminary injunction -- your current preliminary
5 injunction motion that you filed three weeks ago.

6 A. Yeah.

7 Q. Okay. You've never made a veil-piercing
8 claim in any pleading germane to this lawsuit.

9 A. Correct.

10 Q. Okay. Yet you claim, in your motion for
11 preliminary injunction, that -- let me specifically
12 quote here -- that your purpose for filing the
13 preliminary injunction was to prevent 716's owners
14 and their affiliates from sucking the limited
15 liability company dry and unable to pay anything
16 back. Is that your sincerely held belief?

17 A. Absolutely. And you have refused to
18 provide discovery that would allay that concern.

19 Q. Do you think that you're in a better
20 position than the Agency to determine whether the
21 landlord, with whom they have contracted for
22 numerous years, is in good financial standing?

23 A. You know, I think that's a ridiculous
24 question --

25 Q. Why?

1 A. -- and so -- because the Legislative
2 Affairs Agency is not concerned about getting that
3 money back. It's a standard procedure, in these
4 type of limited liability companies that hold real
5 estate, is for the cash that accumulates to be
6 distributed to the members.

7 And in this case, that -- in my mind, there's
8 a pretty high likelihood that that's what's happened,
9 that money has been distributed to the members that
10 isn't needed for direct operations, and that unless
11 the limited liability company's veil is pierced, that
12 that money is not going to be available for repayment.

13 And, again, you've refused to provide
14 discovery on that issue. How much money does -- is
15 there still in 716 LLC? How much money has been paid
16 to its members?

17 Q. Mr. Gottstein, you've publicly searched 716
18 as part of your research into this case, Department
19 of Commerce website.

20 A. Yes.

21 Q. You understand they're in good standing,
22 right? You understand that?

23 A. But paid the \$125 biennial report? Yeah, I
24 think they probably have. What are they getting?
25 Almost \$300,000 a month in rent?

1 MR. ROBINSON: I'm going to go off record and
2 take another short break.

3 (Recess taken.)

4 MR. ROBINSON: Back on record.

5 As previously discussed off record,
6 Mr. Gottstein has agreed that we can continue this
7 deposition at a later point, upon further review of
8 the discovery he provided last week, up until the
9 allotted total time of six hours, correct?

10 THE WITNESS: Yes. For anything new you
11 decide you want to talk to me about.

12 BY MR. ROBINSON:

13 Q. Okay. I just have one final question for
14 today. Mr. Gottstein, Alaska Building, Incorporated
15 never once intended to serve as the owner/lessor for
16 replacement space at the LIO, correct?

17 A. Correct.

18 MR. ROBINSON: Thank you very much. Going
19 off record.

20 MR. CUDDY: I have got a couple of questions.

21 MR. ROBINSON: Sure. Sorry, Kevin.

22 MR. CUDDY: That's okay.

23 FURTHER EXAMINATION

24 BY MR. CUDDY:

25 Q. I'll be shorter. So I do not have 20

1 exhibits to show you, Mr. Gottstein, but I do have a
2 computer screen that I hope you can take a look at.
3 I have brought up here -- hope the font is big
4 enough. This is the discovery production that you
5 provided a link to the parties for this most recent
6 production. Do you see that?

7 A. Yeah.

8 Q. Okay.

9 A. And it's a zip file, so you have got a
10 display of the files within the zip archive.

11 Q. Right. And so this zip file, once
12 downloaded, provided the parties with access to
13 original Microsoft Word documents, PDF files and the
14 like that you had made available in response to
15 716's discovery requests. Is that correct?

16 A. Yes.

17 Q. Okay. So if I look at the letters to the
18 Attorney General, which I will --

19 A. Yeah.

20 Q. -- bring closer to you, there's a last
21 modified date there. Do you see what that is?

22 A. Yeah.

23 Q. What is it?

24 A. October 30th, 2013, at 12:39 p.m.

25 Q. Okay. And you had a couple of different

1 versions of this letter. Is that right?

2 A. Yes.

3 Q. Do you see those on the screen?

4 A. I see another one dated October 31st, 2013.

5 Q. And what was the time on that?

6 A. 11:00 a.m.

7 Q. Okay. And you testified earlier today that
8 you were thinking about, quote, unquote, launching
9 the grenade and seeking an injunction to stop the
10 project unless you received adequate assurances that
11 the Alaska Building would not be damaged. Is that
12 right?

13 A. Yes.

14 Q. And did you receive those assurances on or
15 about October 30th?

16 A. No, I wouldn't say that they were
17 satisfactory, but that's what I could -- could get.
18 And then ultimately I decided not to file the
19 injunction, because I felt there was too much risk
20 of not being successful, and having retaliatory
21 damage to the Alaska Building, especially after
22 Mr. McClintock pointed out that I probably wouldn't
23 be able to post the bond.

24 Q. Did you take any further steps after you
25 had been drafting these letters to the Attorney

1 General on or about October 30th? Did you take any
2 steps after that date to continue in that direction
3 with another letter for the research, anything at
4 all between, say, October 31st and March of 2015?

5 A. Well, I didn't take any, you know, steps to
6 advise, you know, people, I mean, the Attorney
7 General anyway. I don't know what further
8 research -- I may have done more research.
9 Certainly, I did -- you know, probably at least
10 relooked at it before I filed the lawsuit.

11 Q. Okay. You dropped this idea of sending a
12 letter to the Attorney General basically at the same
13 time that you received the license to enter
14 indemnity and insurance agreement. Is that right?

15 A. No. I mean, basically, I dropped it. I
16 mean, which -- if you're talking -- the gas piping
17 one was -- I mean, that was just kind of coincidence
18 that it was the same time. But I -- I dropped
19 pursuing that because of the concern over the
20 retaliatory damage to the Alaska Building, so which
21 ultimate- -- go ahead.

22 Q. Well, did anyone threaten you,
23 Mr. Gottstein?

24 A. No.

25 Q. Did Mr. McClintock suggest to you that you

1 may be subject to some sort of retaliatory damage
2 if --

3 A. No.

4 Q. -- you didn't sign on?

5 A. No. But -- no. But I -- I certainly
6 thought it was a real concern. I mean, we had to
7 really press for measures to protect the Alaska
8 Building. And -- no. And it was not entirely
9 successful, both in terms of not getting what was
10 asked for and also in terms of damage resulting to
11 Alaska Building.

12 Q. Okay. And one of those measures, if I can
13 find it, was this Exhibit F, the license to enter
14 indemnity and insurance agreement, which was signed
15 on October 30th, 2013.

16 A. No. That was just for the gas piping,
17 wasn't it?

18 Q. Okay.

19 A. On that date, yeah. That -- yeah. No,
20 that was just to move the gas service.

21 Q. It was an indemnity agreement, right?

22 A. What?

23 Q. It was an indemnity agreement?

24 A. Yeah. But it was just for the gas piping.
25 The main agreement was signed on December 6th.

1 Q. Okay. And by then you had already scrapped
2 this idea of alerting the Attorney General about any
3 concerns with the lease extension. Is that right?

4 A. Yeah. I mean, I -- he didn't bring it up,
5 but I actually e-mailed Mr. McClintock about that.

6 Q. Okay. Did you have a conversation with
7 Daniel Herz from the Alaska Dispatch News in August
8 of 2015 in connection with the hearing on the motion
9 to dismiss?

10 A. Yes.

11 Q. And --

12 A. I mean, I'm not sure of the specific date.

13 Q. Roughly in that time period?

14 A. Some -- sometime before the -- that
15 hearing.

16 Q. Okay. And in an article that Mr. Herz
17 published on August 17th, 2015, he reports that you
18 had estimated you had put the equivalent of \$40,000
19 of your own time into the case at that point.

20 A. Yes.

21 Q. Was that true?

22 A. Yes.

23 Q. And roughly how much do you have into the
24 case now if you had \$40,000 worth of time as of
25 mid-August 2015?

1 A. I don't know. I mean, I actually pulled up
2 the billing and looked at it, and I haven't done --
3 I don't know what it is now.

4 Q. In excess of 50,000?

5 A. Probably, yes. Yeah. I would be surprised
6 if it wasn't.

7 Q. Okay. And you had indicated earlier this
8 morning that you were conflicted about whether to
9 bring a suit for the public back in October of 2013.

10 A. Well, I don't know that I said that, but it
11 was in an e-mail. And I was conflicted about even
12 entering into an agreement with 716 LLC because of
13 the lease being illegal. So in other words, I had a
14 desire to bring the claim that it was illegal back
15 then, and that was -- the conflict was that I felt
16 that was going to, you know, put the Alaska Building
17 at great risk. And that was -- that was the
18 conflict.

19 Q. Okay. And so you were prepared to put the
20 interest of the building and any potential property
21 damage it may suffer ahead of that of the public, in
22 terms of the legality or illegality of this lease?

23 A. Well, you have to put that in the context
24 of my evaluation of the prospect of being
25 unsuccessful in preventing the project from going

1 forward. And as I thought about it, I thought it
2 was going to be very difficult to actually stop the
3 project, and that would then jeopardize the Alaska
4 Building.

5 Q. Why did you think that? Why did you think
6 it would be difficult to stop the project from going
7 forward?

8 A. Basically the bond requirement.

9 Q. Anything else?

10 A. No, not really.

11 Q. Did you ever --

12 A. I mean --

13 Q. Sorry. Go ahead.

14 A. I mean, there's always litigation risk, so,
15 I mean, I have -- in the Mental Health Trust Lands
16 litigation, David Walker, co-counsel, you know, said
17 that if you have a hundred percent case, you have an
18 80 percent chance of winning. And so there's a
19 bond, and then there's just a general litigation
20 risk, which I saw as having very potentially severe
21 negative consequences.

22 Q. Did this idea about a potential injunction
23 or other lawsuit in the October 2013 timeframe, did
24 that ever go further than an idea? Did you actually
25 begin to start drafting any pleadings?

1 A. No.

2 MR. CUDDY: Okay. I have nothing further.

3 THE REPORTER: Off record?

4 MR. ROBINSON: Yes, off record. Thank you.

5 (Proceedings recessed at 11:12 a.m.)

6 (Signature reserved.)

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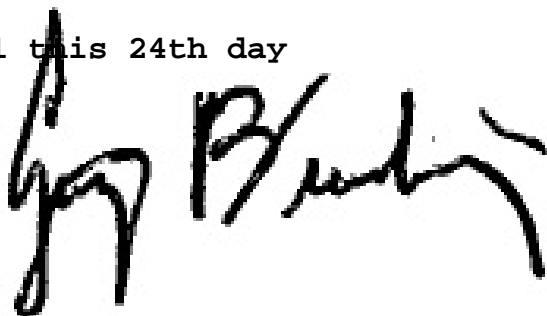
24

25

CERTIFICATE

I, GARY BROOKING, Registered Professional
Reporter and Notary Public in and for the State of
Alaska, do hereby certify that the witness in the
foregoing proceedings was duly sworn; that the
proceedings were then taken before me at the time
and place herein set forth; that the testimony
and proceedings were reported stenographically by
me and later transcribed by computer transcription;
that the foregoing is a true record of the
testimony and proceedings taken at that time;
and that I am not a party to nor have I any
interest in the outcome of the action herein
contained.

IN WITNESS WHEREOF, I have hereunto set
my hand and affixed my seal this 24th day
of October, 2015.



GARY BROOKING, RPR
My Commission Expires 6/28/2016

GB4229

1 Errata Sheet

2

3 NAME OF CASE: ALASKA BUILDING vs. 716 WEST FOURTH AVENUE LLC

4 DATE OF DEPOSITION: 10/23/2015

5 NAME OF WITNESS: JAMES GOTTSTEIN - VOL. II

6 Reason Codes:

7 1. To clarify the record.

8 2. To conform to the facts.

9 3. To correct transcription errors.

10 Page _____ Line _____ Reason _____

11 From _____ to _____

12 Page _____ Line _____ Reason _____

13 From _____ to _____

14 Page _____ Line _____ Reason _____

15 From _____ to _____

16 Page _____ Line _____ Reason _____

17 From _____ to _____

18 Page _____ Line _____ Reason _____

19 From _____ to _____

20 Page _____ Line _____ Reason _____

21 From _____ to _____

22

23

24

25

Signature

Date

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From: Jim Gottstein <jim.gottstein@psychrights.org>
Sent: Friday, October 11, 2013 7:44 AM
To: 'Dave Le Clair'
Cc: jim.gottstein@psychrights.org
Subject: RE: Numbers!

Hi Dave,

I found where the AND said the rent was 281,638 per month for 64,000 square feet so that works out to \$4.40 per sq. ft., which sounds familiar.

Obviously, I am very concerned about this. I am even thinking about filing for an injunction if Pfeffer doesn't provide adequate assurances. This couldn't come at a worse time in terms of my workload. Don McClintock is indeed representing Pfeffer. If I had to get someone else, who would you recommend? Of course, I can't really afford to pay a lawyer.

Jim Gottstein, President
Alaska Building, Inc.
Home of the AlaskaCam (r)
406 G Street, Suite 206
Anchorage, AK 99501
Tel: (907) 274-7686
Fax: (907) 274-9493
jg@touchngo.com

From: Jim Gottstein [<mailto:jim.gottstein@psychrights.org>]
Sent: Friday, October 11, 2013 7:25 AM
To: 'Dave Le Clair'
Cc: jim.gottstein@psychrights.org
Subject: Numbers!

Hi Dave,

I didn't write down those numbers you gave me on Pfeffer's Legislative Information Office Project and I was wondering if you could give them to me again?

I recall you saying what the monthly per square foot rent the State is going to pay and what Class A construction cost is in terms of a monthly rent. I don't think you told me what rents are, but that would be helpful, too.

Jim Gottstein, President
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jg@touchngo.com



From: Donald W. McClintock <dwm@anchorlaw.com>
Sent: Friday, October 11, 2013 10:01 AM
To: 'Jim Gottstein'
Subject: RE: LIO Renovation
Attachments: image001.jpg.html

Jim,

I have not been privy to your conversations and not sure what concerns you have articulated, but I can assure you he takes very carefully the goal of not damaging your building. The line people of the job, Bob O'Neill and Shea Simasko are very experienced and some of the best people I have worked with in terms of professionalism.

Let me know what I can do to help communications.

Don

Donald W. McClintock
Ashburn & Mason, P.C.
1227 W. 9th Ave. Ste. 200
Anchorage, AK 99501
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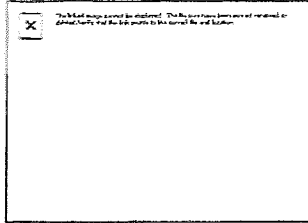
From: Jim Gottstein [mailto:jim.gottstein@psychrights.org]
Sent: Friday, October 11, 2013 9:56 AM
To: Donald W. McClintock
Cc: jim.gottstein@psychrights.org
Subject: RE: LIO Renovation

Hi Don,

Yes, I will talk to you before I file. I don't want to have to file, but don't have the sense Mark is taking my concerns seriously.

James B. (Jim) Gottstein, Esq.
President/CEO





Law Project for Psychiatric Rights
406 G Street, Suite 206
Anchorage, Alaska 99501 USA
Phone: (907) 274-7686 Fax: (907) 274-9493
jim.gottstein@psychrights.org
<http://psychrights.org/>

The Law Project for Psychiatric Rights is a public interest law firm devoted to the defense of people facing the horrors of forced psychiatric drugging and electroshock. We are further dedicated to exposing the truth about these drugs and the courts being misled into ordering people to be drugged and subjected to other brain and body damaging interventions against their will. Currently, due to massive growth in psychiatric drugging of children and youth and the current targeting of them for even more psychiatric drugging, PsychRights has made attacking this problem a priority. Children are virtually always forced to take these drugs because it is the adults in their lives who are making the decision. This is an unfolding national tragedy of immense proportions. Extensive information about all of this is available on our web site, <http://psychrights.org/>. Please donate generously. Our work is fueled with your IRS 501(c) tax deductible donations. Thank you for your ongoing help and support.

From: Donald W. McClintock [<mailto:dwm@anchorlaw.com>]
Sent: Friday, October 11, 2013 9:50 AM
To: 'Jim Gottstein'
Subject: RE: LIO Renovation

Jim,

Before you file for an injunction, let's have a cup of coffee. I don't think even you can afford the bond.

You have a good engineer on board. Let's engage substantively before you push the panic button. I am not sure why you think it is in anyone's interest to damage your building. These are professionals who managed to build more complex structures in more complicated circumstances without leaving a mess.

Don

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From: Jim Gottstein [<mailto:jim.gottstein@psychrights.org>]
Sent: Friday, October 11, 2013 9:44 AM
To: Donald W. McClintock
Cc: jim.gottstein@psychrights.org
Subject: LIO Renovation

Hi Don,

If I end up filing for an injunction will you accept service for Pfeffer? Criterion?

Jim Gottstein, President
Alaska Building, Inc.
Home of the AlaskaCam (r)
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jg@touchngo.com

From: James B. Gottstein <james.b.gottstein@gottsteinlaw.com>
Sent: Friday, October 25, 2013 6:38 PM
To: 'Donald W. McClintock'
Cc: james.b.gottstein@gottsteinlaw.com
Subject: RE: Revised Agreement; Bill

Hi Don,

It is your client whose ridiculous time frame is dictating the pace. I understand that you couldn't make time yesterday or today. I will not be sympathetic when you ask for more time on Monday. Realistically, I think with BBFM's and Eric's costs we are looking at \$10,000. You might give Mark a heads up for that amount. I will expect a check for that amount by the end of the day Monday or will have to assume Mark has no intention of covering my costs.

James B. Gottstein
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e-mail: James.B. Gottstein@GottsteinLaw.Com

From: Donald W. McClintock [mailto:dwm@anchorlaw.com]
Sent: Friday, October 25, 2013 6:14 PM
To: James B. Gottstein
Cc: Eric Follett; Rebecca A. Windt; Heidi A. Wyckoff; james.b.gottstein@gottsteinlaw.com
Subject: Re: Revised Agreement; Bill

Jim,

As much as I appreciate your company I would like to keep my weekend commitments to my family. I will see you Monday at 1030. I am happy to talk to Eric as we'll I just do not understand his role.

Sent from my iPhone

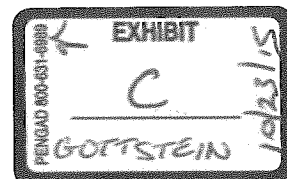
On Oct 25, 2013, at 5:31 PM, "James B. Gottstein" <james.b.gottstein@gottsteinlaw.com> wrote:

Hi Don,

I have two concerns. One is the integrity of the Alaska building and the other is that I not bear any costs as a result of Mark's Project. I was initially going to be very accommodating, but when Mark refused to acknowledge the impacts on my tenants whose space includes the party wall it became clear to me that he had no intention of doing right by me unless forced to.

Everything since then has reinforced that, as will your failure to bring the check. So, no, it is not a condition, but I am not sanguine.

I would prefer to meet before Monday, either tomorrow morning or Sunday morning. Failing that, let's make it 10:30 on Monday. My cell number is 538-4777.



Or, you could just talk to Eric. I really have no time for this.

You should send me a memo on what you think our respective duties are with respect to the party wall. I didn't find an Alaska statute or case, but I didn't look very hard.

James B. Gottstein
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501
Tel: (907) 274-7686 Fax: (907) 274-9493
e-mail: [James.B. Gottstein@GottsteinLaw.Com](mailto:James.B.Gottstein@GottsteinLaw.Com)

From: Donald W. McClintock [<mailto:dwm@anchorlaw.com>]
Sent: Friday, October 25, 2013 4:14 PM
To: 'James B. Gottstein'
Cc: Eric Follett; Rebecca A. Windt; Heidi A. Wyckoff
Subject: RE: Revised Agreement; Bill

Jim,

Is a check a condition for meeting, or can we just talk? I am open Monday any time except 11:30 to 1:30 and after 3:30. I would love to walk through the building and promise not to break anything. When we meet I can explain our side of what the relative obligations are regarding the party wall and why your reasonable cooperation will lead to a better end result for both of us.

By the way, as a prelude to the meeting. I think you and my client both own the wall. The issue is what duty each owner owes to the other co-owner. We can discuss that as well.

I understand that BBFM will meet with our crew on Tuesday. Maybe that meeting will help as well.

Don

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(907) 277-8235 (fax)
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From: James B. Gottstein [<mailto:james.b.gottstein@gottsteinlaw.com>]
Sent: Friday, October 25, 2013 7:20 AM
To: Donald W. McClintock
Cc: james.b.gottstein@gottsteinlaw.com; Eric Follett
Subject: Revised Agreement; Bill

Hi Don,

I have (hopefully) attached a slightly revised agreement, with the only two changes being that blocking access to the parking spot will cost \$100 per day and payment of \$6,344 for my time spent through yesterday. An invoice for the \$6,344 is also (hopefully) attached.

You should bring the check for \$6,344 with you on Monday.

I see no reason why I should have to bear any expense because of Mark's project. At our initial meeting Mark said he had no budget to pay for the Alaska Building's lost rent. I view that as outrageous and a clear indication that Mark has no intention of treating me fairly without an ironclad agreement in place.

I thought we had an understanding that Mark was not going to move forward until BBFM had had a chance to review the plans, means and methods.

Yesterday, I received a copy of the following e-mail:

On 10/23/2013 4:24 PM, Shea C. Simasko wrote:
Hi Dennis,

I spoke with Criterion today. Latest update is they met with MOA yesterday to discuss the party wall and are in agreement the party wall will stay. With this information Redi, is working on the design plans and details with the wall in place. We plan to sit down and review with you once the plans near completion which will be very soon.

That the party wall is to stay in place should not have even been a topic of discussion.

To say the timeline for this is unreasonable is a gross understatement. I believe Mark is trying to accomplish a *fait accompli* by getting the Old Empress Theater torn down as soon as possible and the Project going to prevent anyone from stopping it.

Originally, I wasn't going to charge for my time or having to move my office. That is now off the table.

I don't have time for negotiations. I do think we need to pick the person who is going to decide what costs Mark refuses to pay have to be paid. I also think it would be a good idea to figure out a mechanism for determining in what event(s) the \$Ten million purchase obligation is triggered if we can.

I believe there is a well better than even chance that I can stop the project, maybe without even having to file a lawsuit, if we cannot reach an agreement in short order (Monday?). You can talk to Eric about the situation. He has a very good handle on it.

James B. Gottstein
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501
Tel: (907) 274-7686 Fax: (907) 274-9493
e-mail: James.B.Gottstein@GottsteinLaw.Com

Law Offices of James B. Gottstein

406 G Street, Suite 206
Anchorage, AK 99501
(907) 274-7686 Tel
(907) 274-9493 Fax

Invoice

| DATE | INVOICE # |
|------------|-----------|
| 10/25/2013 | 3386 |

| BILL TO |
|---|
| Pfeffer Development, LLC Mark E. Pfeffer 425 G Street, Suite 210 Anchorage, Alaska 99501 |

| | | | | TERMS |
|------------|--|-------|--------------|----------|
| DATE | WORK PERFORMED | HOURS | RATE | AMOUNT |
| 9/24/2013 | E-mail from/to A. Slinker (.05) | 0.05 | 325.00 | 16.25 |
| 9/25/2013 | E-mails from/to A. Slinker (.12) | 0.12 | 325.00 | 39.00 |
| 10/2/2013 | Conference with Pfeffer & minions, Walk-Through (1.5) | 1.5 | 325.00 | 487.50 |
| 10/3/2013 | Conference with Project personnel (1.5) | 1.5 | 325.00 | 487.50 |
| 10/4/2013 | Call from S. Simasko, e-mails from/to S. Simasko (.1) | 0.1 | 325.00 | 32.50 |
| 10/5/2013 | Walk-through with Simasko (1) | 1 | 325.00 | 325.00 |
| 10/7/2013 | Research & Review title documents (1.5) | 1.5 | 325.00 | 487.50 |
| 10/8/2013 | E-mail to D. Berry (.05) | 0.05 | 325.00 | 16.25 |
| 10/10/2013 | E-mail from/to D. Berry, e-mails from/to S. Simasko, e-mail from B. Nolin, call with Alaska USA Insurance Brokers, e-mails from Dave DeRoberts (.7) | 0 | 325.00 | 0.00 |
| 10/11/2013 | E-mails to/from S. Simasko, e-mails to/from D. McClintock, e-mail from/to B. O'Neill, Criterion Gas Loads check (1) | 1 | 325.00 | 325.00 |
| 10/13/2013 | E-mail FOIA Request to AHFC (.1), Access and Indemnification Agreement (3), e-mail to D. Berry and F. Braun, (.12) | 3.22 | 325.00 | 1,046.50 |
| 10/14/2013 | E-mail from D. Berry, Memo to tenants, conferences with tenants, e-mails from/to D. McClintock, e-mail from/to S. Johansson, e-mail from M. Pfeffer (1.5) | 1.5 | 325.00 | 487.50 |
| 10/15/2013 | E-mails from/to D. McClintock (.08) | 0.08 | 325.00 | 26.00 |
| | | | Total | |

Law Offices of James B. Gottstein

406 G Street, Suite 206
Anchorage, AK 99501
(907) 274-7686 Tel
(907) 274-9493 Fax

Invoice

| DATE | INVOICE # |
|------------|-----------|
| 10/25/2013 | 3386 |

| BILL TO |
|---|
| Pfeffer Development, LLC Mark E. Pfeffer 425 G Street, Suite 210 Anchorage, Alaska 99501 |

| | | | | TERMS |
|------------|--|-------|--------------|-------------------|
| DATE | WORK PERFORMED | HOURS | RATE | AMOUNT |
| 10/16/2013 | E-mail from/to D. McClintock (.05) | 0.05 | 325.00 | 16.25 |
| 10/17/2013 | E-mails from/to S. Johansson, review AS appraisal & lease "extension," review AS 36.30.083, call to E. Follett, e-mail to/from E. Follett, call with E. Follett (2) | 2 | 325.00 | 650.00 |
| 10/21/2013 | e-mail from D. Berry, call with D. Berry, e-mails to D. Berry, walk through with D. Berry (1.5) | 1.5 | 325.00 | 487.50 |
| 10/22/2013 | E-mail from D. Berry, e-mail to D. Berry, call with E. Follett (may not be this day), conference with C. Waldrup (May not be this day)(1) | 1 | 325.00 | 325.00 |
| 10/23/2013 | E-mail from/to D. Berry (.1) | 0.1 | 325.00 | 32.50 |
| 10/24/2013 | Agreement, conferences with ACS, call with D. Berry, call from D. Berry, e-mail from D. Berry, conference with C. Wier, e-mail to D. McClintock(3.2), e-mail from/to D. McClintock (.05) | 3.25 | 325.00 | 1,056.25 |
| | | | Total | \$6,344.00 |

From: Donald W. McClintock <dwm@anchorlaw.com>
Sent: Wednesday, October 30, 2013 10:07 AM
To: 'James B. Gottstein'
Cc: Rebecca A. Windt; Heidi A. Wyckoff
Subject: RE: Larger Issues

Jim,

Thanks for the clarification. As noted in our meeting, we are comfortable with the process that the agencies pursued.

Don

Donald W. McClintock
Ashburn & Mason, P.C.
1227 W. 9th Ave. Ste. 200
Anchorage, AK 99501
(907) 276-4331 (voice)
(907) 277-8235 (fax)
www.anchorlaw.com

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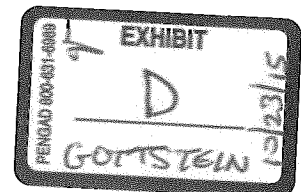
From: James B. Gottstein [<mailto:james.b.gottstein@gottsteinlaw.com>]
Sent: Wednesday, October 30, 2013 9:13 AM
To: Donald W. McClintock
Cc: james.b.gottstein@gottsteinlaw.com
Subject: Larger Issues

Hi Don,

I am assuming your client is not going to work with me to fill in the blanks and sign the Indemnification Agreement I e-mailed last Friday, and we discussed Monday. As you know I have been very conflicted about even making a deal in light of what I learned about the project being a violation of state law. I don't really need anything in writing from Eric to launch the grenade, but gave you the impression you had a couple of days for him to get something in writing to me. Since I don't have any sense that your client is going to agree to the Indemnification Agreement, my moral conflict is resolved, but I do feel I should give you notice since I left the impression your client had through today.

When I met with you on Monday, I fully intended to pursue the criminal violation, but as I was writing the letter to Geraghty and Svobodny, I decided not to mention it. I am not trying to harm Mark; I just think the deal is outrageous and should be stopped.

James B. Gottstein
Law Offices of James B. Gottstein
406 G Street, Suite 206



Anchorage, AK 99501
Tel: (907) 274-7686 Fax: (907) 274-9493
e-mail: James.B. Gottstein@GottsteinLaw.Com



ALASKA BUILDING, INC.

406 G Street, Suite 206, Anchorage, Alaska 99501
(907) 274-7686 Phone ~ (907) 274-9493 Fax

October 30, 2013

Michael C. Geraghty
Attorney General
P.O. Box 110300
Juneau, AK 99811

Re: Anchorage Legislative Information Office
Fraudulent Lease Extension

Dear Attorney General Geraghty and Deputy Attorney General Svobodny

I am the owner of the Alaska Building, which is adjacent to the Old Empress Theater, most recently the Anchor Pub. The Alaska Building and the Old Empress Theater share a party wall. Thus, I was naturally concerned when plans were announced to demolish the Old Empress Theater to make way for

Sincerely,

Jim Gottstein
President

cc: The Media
Don McClintock, Esq.
attorney.general@alaska.gov
richard.svobodny@alaska.gov



License to Enter
Indemnity and Insurance Agreement

1. License:

Owner grants to Contractor a limited license to enter upon the Property (the buildings located on a portion of Lot 2 and Lot 1, Block 40 Original Townsite of Anchorage) for the purpose of relocating the meter gas service and gas lines to the Property, and to the extent required for safety, to shut down and restart the boilers. Such license shall expire on November 22, 2013 unless extended by Owner.

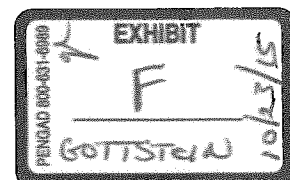
2. Indemnity:

The Contractor, Criterion General, Inc. located at 2820 Commercial Drive Anchorage, Alaska 99501, shall defend, indemnify and hold harmless the Owner, Alaska Building, Inc. and their agents and employees from and against all claims, damages, losses and expenses including interest, costs and attorneys' fees arising out of or resulting from the performance of the project to re-locate the gas service from the service behind the property owned by 716 West Fourth Avenue, LLC, adjacent to the property owned by Alaska Building, Inc., to a new meter to be installed behind the property owned by Alaska Building, Inc., provided that any such claim, damage, loss or expense is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. The Contractor need not indemnify Owner for the Owner's sole negligence; however, this indemnification shall apply to circumstances of combined fault.

In any and all claims against the Owner, Alaska Building, Inc. or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.

Contractor will maintain the insurance coverages as attached.

3. Use of Hazardous Materials on the Project:



Compliance with Environmental Laws: Contractor covenants full compliance with any applicable federal, state, or local environmental statute, regulation, or ordinance presently in effect or that may be amended or effective in the future regarding the handling of hazardous materials.

Contractor shall not cause or permit any hazardous material to be brought upon, kept, or used in or about the project by Contractor, or its authorized representatives or invitees, except for such hazardous material as is necessary or useful to Contractor's work on the project.

Any hazardous material permitted on the Project as provided in this paragraph, and all containers therefore, shall be used, kept, stored, and disposed of in a manner that complies with all laws or regulations applicable to any such hazardous material.

Contractor shall not discharge, leak or emit, or permit to be discharged, leaked, or emitted, any material into the atmosphere, ground, sewer system, or any body of water if such material (as reasonably determined by Owner or any governmental authority) does or may pollute or contaminate the same, or may adversely affect (1) the health, welfare, or safety of persons, whether located on the project or elsewhere, or (2) the condition, use, or enjoyment of the project or any other real or personal property.

Contractor specifically agrees to report all releases, threatened releases, discharges, spills, or disposal of hazardous substances, in whatever quantity, immediately to the appropriate regulatory authorities and simultaneously to Owner, and to keep Owner fully informed of any communication between Contractor and any person or agency concerning potential environmental contamination and hazardous substances. Contractor hereby agrees that it shall be fully liable for all costs and expenses related to the use, storage, and disposal of hazardous material kept on the project by Contractor, or its authorized representatives and invitees.

AGREED TO THE FOREGOING THIS 30 DAY OF October 2013.

James B. Gottstein
ALASKA BUILDING, Inc.
Digitally signed by James B. Gottstein
DN: cn=James B. Gottstein, o=Alaska Building, Inc., ou=
email=jg@touchng
o.com, c=US
Date: 2013.10.30
16:03:07 -08'00'

David Delahunt
Criterion General, Inc.
CONTRACTOR

Vice President
TITLE
October 30, 2013
DATE

Attachment to License to Enter and Indemnity and Insurance Agreement

Insurance & License Requirements

1. The CONTRACTOR is to provide the Alaska Building with a certificate of insurance prior to commencement of construction. All insurance policies shall contain a provision that the coverages afforded thereunder shall not be cancelled or not renewed, nor restrictive modifications added, until at least thirty (30) calendar days' prior written notice has been given to the Certificate Holder. The certificate shall include items A-F as noted below.

- A. General Liability
- | | |
|-------------------------------|-------------|
| General Aggregate | \$2,000,000 |
| Products/Completed Operations | \$1,000,000 |
| Personal/Advertising | \$1,000,000 |
| Each Occurrence | \$1,000,000 |
| Damage to Owner's Premises | \$100,000 |
| Medical Expense | \$5,000 |
- B. Automobile
- | | |
|-----------------------|-------------|
| Combined Single Limit | \$1,000,000 |
|-----------------------|-------------|
- C. Workers' Compensation
- | | |
|-----------------------------|-----------|
| Workers' Compensation | Statutory |
| EL - Each Accident | \$500,000 |
| EL - Disease, Policy Limit | \$500,000 |
| EL - Disease, each Employee | \$500,000 |
- D. Alaska Building, Inc. shall be added as an additional insured under the insurance (except Workers' Compensation) and all named as certificate holders.
- E. Provide a Waiver of Subrogation provision on the Workers' Compensation. (If applicable)
- F. Auto insurance should apply to owned, non-owned and hired auto exposure of the contractor and subcontractors working on the project.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/30/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

| | | | |
|---|--|---|--|
| PRODUCER Alaska USA Insurance Brokers P.O. Box 196530 Anchorage AK 99519 | | CONTACT NAME: Brenda Nolin, CIC, CISR PHONE (A/C, No. Ext.): (907) 561-1250 FAX (A/C, No.): (907) 561-4315 E-MAIL ADDRESS: b.nolin@alaskausainurance.com PRODUCER CUSTOMER ID #: 00052773 | |
| INSURED Criterion General, Inc. 2820 Commercial Drive Anchorage AK 99501-3015 | | INSURER(S) AFFORDING COVERAGE INSURER A: Navigators Specialty Insurance 36056 INSURER B: American Fire & Casualty INSURER C: Liberty Northwest INSURER D: Colony Insurance Company 39993 INSURER E: INSURER F: | |

COVERAGES CERTIFICATE NUMBER: 13-14 Master COI REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL SUBR INSR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|--|--|---|-------------------------|-------------------------|---|
| A | GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Surplus Lines Policy | | LA13CGL01914500 | 1/1/2013 | 1/1/2014 | EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ EXCLUDED PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 |
| | GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC | | Worldwide Facilities Inc. | | | |
| | AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS | | BAA1455340530 | 1/1/2013 | 1/1/2014 | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Medical payments \$ 5,000 Uninsured motorist combined \$ 1,000,000 |
| | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DEDUCTIBLE | | Surplus Lines Policy Worldwide Facilities Inc. | | | EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000 Products-Comp Ops Aggregate \$ 4,000,000 |
| A | RETENTION \$ | | CH13EXC7688451C | 1/1/2013 | 1/1/2014 | |
| C | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below | Y/N <input checked="" type="checkbox"/> Y N/A | WC41NC014537013 | 1/1/2013 | 1/1/2014 | <input checked="" type="checkbox"/> WC STATUTORY LIMITS E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000 |
| D | Pollution Liability Professional Liability | | PKC300494 Surplus Lines Policy-WWF | 1/1/2013 | 1/1/2014 | \$1M Ea Occ Pol/\$2MAggregate Ded:\$50,000 \$1M Ea Cln Prof/\$2MAggregate Ded:\$50,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Re: 716 W 4th Avenue, Anchorage, AK
Alaska Building, Inc. is an Additional Insured on all referenced policies excluding Workers' Compensation, but only with respect to work done by or on behalf of the Named Insured for the project referenced. Subject to policy terms, conditions & exclusions. Alaska Building, Inc. is granted Waiver of Subrogation on the Workers' Compensation policy

| | |
|--|--|
| CERTIFICATE HOLDER jg@touchngo.com Alaska Building, Inc. Home of the AlaskaCam (r) Jim Gottstein, President 406 G Street, Suite 206 Anchorage, AK 99501 | CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE B Nolin, CIC, CISR/BR <i>Brenda L. Nolin</i> |
|--|--|

COMMENTS/REMARKS

as respects the referenced project subject to the policy terms, conditions and exclusions.

CANCELLATION AS PER ALASKA STATUTE AS 21.36.220

At least 10 days' notice of cancellation is required if cancellation is for conviction of the insured of a crime having as one of its necessary elements an act increasing a hazard insured against, or for discovery of fraud or material misrepresentation made by the insured or a representative of the insured in obtaining the insurance or by the insured in pursuing a claim under the policy.

At least 20 days' notice is required for nonpayment of premium or for failure or refusal of the insured to provide the information necessary to confirm exposure or necessary to determine the policy premium.

At least 60 days' notice is required if cancellation is for any reason except as previously noted.

Advance Notice Required for Nonrenewal

Except in case of nonpayment of premium for the expiring policy, or if the insured fails to pay the premium as required by the insurer for renewal, an insurer may not fail to renew a policy unless a written notice of nonrenewal is mailed at least 45 days before the expiration date of the policy or of the anniversary date of a policy written for a term longer than 1 year or with no fixed expiration date.

If notice of nonrenewal is not given as required, the existing policy shall continue until the insurer provides notice for the time period required by this section for that policy. This section does not apply if the insurer has in good faith manifested its willingness to renew.

[AS 21.36.240]

Advance Notice Required for Premium or Coverage Changes

Written notice shall be mailed to the insured and to the agent or broker of record at least 45 days before expiration:

- *if renewal premium is increased more than 10 percent for a reason other than an increase in coverage or exposure base, or
- *if after renewal there will be a material restriction or reduction in coverage not specifically requested by the insured.

If notice before expiration of the policy is not given as required by this section, the existing policy shall continue until the insurer provides notice for the time period required for that policy. This section does not apply to workers compensation insurance.

COMMENTS/REMARKS

ALASKA SURPLUS LINES WORDING APPLIES TO GENERAL LIABILITY, EXCESS LIABILITY, CONTRACTORS POLLUTION AND PROFESSIONAL LIABILITY POLICIES:

"This is evidence of insurance procured and developed under the Alaska Surplus Lines Law AS21.34. It is not covered by the Alaska Insurance Guarantee Association Act, AS21.80. This insurer does not hold a certificate of authority with Alaska, and is not subject to supervision by the Alaska Department of Insurance"
Worldwide Facilities, Inc. - License #9718



ALASKA BUILDING, INC.

406 G Street, Suite 206, Anchorage, Alaska 99501
(907) 274-7686 Phone ~ (907) 274-9493 Fax

UPDATE

(Legislative Information Office Renovation)

To: Alaska Building Tenants
From: Jim Gottstein
Re: Legislative Information Office Renovations
Date October 29, 2013

This is to update you on my October 10, 2013,¹ Memo on the Legislative Information Office renovations (Project).

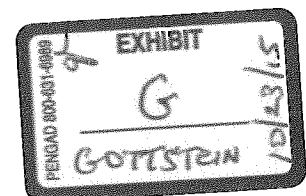
In short, things are a mess. I asked the developer to provide adequate written assurances that

- (1) any costs or damages the Project causes Alaska Building, Inc., and its tenants would be reimbursed by the Project, and
- (2) the Project won't irreparably damage the Alaska Building,

and he refused. The developer has never explained why you or Alaska Building, Inc., should bear any costs caused by their project. I am unwilling to cooperate on that basis and intend to try and stop the Project absent such assurances.

As a result, the Developer is threatening to shut off the gas to the building on November 11th because it is being served from a meter behind what was the Anchor Bar. See, letter on the reverse side of this. There has been some progress on this issue and in any event, it seems unlikely Enstar will allow gas to be shut off to the building in the middle of (what should be by then) winter. Even if agreement is reached, there will be some, hopefully short, period of time when it will be out of service.

¹ incorrectly dated August 21st



716 West Fourth Avenue LLC

425 G Street suite 210

Anchorage, AK 99501

James B. Gottstein

Law Offices of James B. Gottstein

406 G Street, Suite 206

Anchorage, AK 99501

RE: Notice of Removal of Enstar Gas Meter on Anchor Pub Building on November 11

Dear Jim,

The letter is to notify you that the gas meter currently serving your building is being removed from the Anchor Pub. As we have previously discussed, this meter is located on a building scheduled for demolition in Mid-November. The removal of this meter requires that you re-pipe your gas lines from the Anchor Pub to the meter located behind your building on the alley.

If you elect to indemnify us and our contractors, we are happy to perform the work. If you do not feel this is in your best interest you are free to retain a mechanical contractor to perform the work and restart your gas fired equipment.

The removal of the meter is scheduled for November 11.

Feel free to contact us if you have any questions. I can be reached at 907-317-1692 or by email at boneill@pfefferdevelopment.com

Thank You,

A handwritten signature in black ink, appearing to be 'BO' or 'BOL'.

Bob O'Neil, PE

For 716 West Forth Avenue, LLC

James B. Gottstein

From: Amy B. Slinker <ASlinker@PfefferDevelopment.com>
Sent: Tuesday, November 12, 2013 2:59 PM
To: Christopher Schutte; james.b.gottstein; Joe White; Mark Rowley; rmccormick@glacierbrewhouse.com; contrary32@hotmail.com
Cc: Bob O'Neill; Shea C. Simasko
Subject: Informal Neighborhood Meeting: Legislative Information Office building remodel

Hi everyone,

We will hold another informal neighborhood meeting/brief Q&A regarding the remodel of the Legislative Information Office building at 716 West Fourth Avenue.

Date: Friday, November 15

Time: 9:00 a.m.

Location: Uncle Joe's Pizza at 428 G Street

If you have any questions, please feel free to call me at 646-4644. Have a great day—

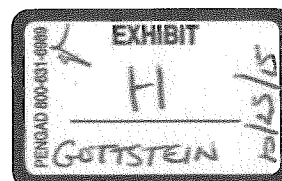
Thanks,

Amy B. Slinker
Director of Marketing

PFEFFER DEVELOPMENT, LLC

425 G Street, Suite 210 | Anchorage, Alaska 99501

p 907.646.4644 | f 907.646.4655 |





ALASKA BUILDING, INC.

406 G Street, Suite 206, Anchorage, Alaska 99501
(907) 274-7686 Phone ~ (907) 274-9493 Fax

LIO RENOVATIONS UPDATE (Gas Re-Piping/Schedule?)

To: Alaska Building Tenants
From: Jim Gottstein
Re: Legislative Information Office Renovations
Date November 8, 2013

The gas service to the main part of the Alaska Building comes from behind the Anchor bar and runs along the party wall, so it has to be re-routed for the Legislative Information Office renovation project. Therefore, this Saturday they plan to install the new piping and then on Wednesday, November 13, starting at 11:00 am, to disconnect the old service and reconnect the new service. They estimate this will take between 3 & 4 hours and we won't have heat during that time. This doesn't apply to G Street Fox, which has its own gas meter. They scheduled it for Wednesday because the temperature is predicted to be in the mid-30's.

I am scheduled to be out of town from Saturday night until late Thursday afternoon, but I may come back early and make it in time. In any event Dennis Berry at the engineering firm of BBFM is generally watching over what they are doing for the Alaska building and Forrest Braun will be on this particular

My current information is they will start with the demolition of the Anchor Bar on November 18th, but this will just be hazardous materials removal. My understanding is they are planning to make a larger opening in the front to accommodate this.

The major demolition is supposed to start around December 1st.

All of these dates seem to slip slide around.



From: Rebecca A. Windt <raw@anchorlaw.com>
Sent: Thursday, December 05, 2013 7:06 PM
To: James B. Gottstein
Cc: Donald W. McClintock; Mark Pfeffer; james.b.gottstein@gottsteinlaw.com
Subject: Re: Revised Agreements, Checks

Hi Jim,

Sounds good. We will look for you at the office in the morning. If you are going to be significantly later than 9 please just give me a heads up.

Thanks and have a good flight,

Becky

Sent from my iPhone

On Dec 5, 2013, at 6:59 PM, "James B. Gottstein" <james.b.gottstein@gottsteinlaw.com> wrote:

Hi Rebecca,

Around 9 sounds good. My flight doesn't get in until around midnight.

James B. Gottstein

Law Offices of James B. Gottstein

406 G Street, Suite 206

Anchorage, AK 99501

Tel: (907) 274-7686 Fax: (907) 274-9493

e-mail: James.B. Gottstein@ GottsteinLaw.Com

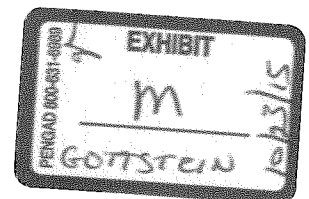
From: Rebecca A. Windt [<mailto:raw@anchorlaw.com>]

Sent: Thursday, December 05, 2013 6:19 PM

To: 'James B. Gottstein'

Cc: Donald W. McClintock; 'Mark Pfeffer'

Subject: RE: Revised Agreements, Checks



e-mail: James.B. Gottstein@ GottsteinLaw.Com

From: Rebecca A. Windt [<mailto:raw@anchorlaw.com>]
Sent: Thursday, December 05, 2013 5:26 PM
To: 'James B. Gottstein'
Cc: Donald W. McClintock; 'Mark Pfeffer'
Subject: Revised Agreements, Checks

Jim,

We have been able to pull together fully executed copies of the agreement and lease, incorporating the final clean-up edits, more quickly than anticipated. Executed copies of both are attached. Also attached is a pdf of the checks which have been cut by 716 West 4th and Criterion in accordance with the agreement and lease. The Criterion check, for the entire year of rent, was mailed to ABI yesterday. The other checks will be hand delivered as soon as we receive executed copies of the agreements, including the tenant waiver signed in your personal capacity.

As we discussed previously, in light of the fact that construction has begun, it is in all parties' interest to have these executed as soon as possible. We remain happy to receive electronic copies from you while you are traveling. Please send them to my attention.

Thank you,

Becky

Rebecca A. Windt

Ashburn & Mason, P.C.

1227 W. 9th Ave. Ste. 200

Anchorage, AK 99501

(907) 276-4331 (voice)

(907) 277-8235 (fax)

www.anchorlaw.com

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Access, Indemnity, and Insurance Agreement

This Access, Indemnity, and Insurance Agreement (the "Agreement") is made as of the date of the last signature hereto, by and between 716 West Fourth Avenue, LLC ("716"), an Alaska limited liability company, whose address is 737 W. 5th Ave., Anchorage, Alaska 99501, and Alaska Building, Inc. ("ABI"), an Alaska corporation, whose address is 406 G Street, Suite 206, Anchorage, Alaska (each a "Party" and, together, the "Parties").

RECITALS

WHEREAS ABI owns certain real property located at the intersection of 4th Avenue and G Street in Anchorage, fully described as:

Lot One (1), and the East 10 1/2 feet of Lot Two (2), Block Forty (40) of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska (the "ABI Property")

and the building constructed on such property (herein, the "Alaska Building"); and

WHEREAS 716 owns certain real property located adjacent to the Alaska Building on 4th Avenue in Anchorage, fully described as:

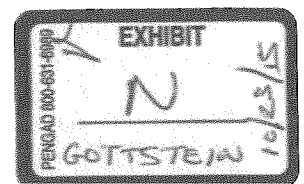
The West 39 and 1/2 feet of Lot Two (2), Block Forty (40) of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska (the "716 Property")

and the building constructed on such property (herein, the "Empress Theater"); and

WHEREAS the Alaska Building and the Empress Theater were constructed sharing a party wall, described and pursuant to the terms of certain documents recorded at Book 3, Page 293 on January 22, 1917, at Book 5, Page 300, on August 21, 1918, and at Book 10, Page 83 on July 13, 1923, all in the Anchorage Precinct, Territory of Alaska (such wall, the "Party Wall," and such documents, the "Party Wall Agreement"); and

WHEREAS 716 intends to demolish the Empress Theater and to construct a new building on the 716 Property (such construction, the "Project" and such new structure, the "New Building"); and

WHEREAS pursuant to the Party Wall Agreement and common law regarding party walls 716 and ABI each have the shared duty to repair and preserve the Party Wall, during the demolition of the Empress Theater and otherwise; and



WHEREAS the owners of ABI have a large amount of family history associated with the Alaska Building and are committed to preserving the building as long as possible, acknowledging that the Alaska Building is one of the oldest structures in Anchorage, being first constructed on or around 1917, and of historical importance; and

WHEREAS ABI has hired BBFM Engineers, Inc. ("BBFM") to be its representative regarding engineering questions and issues during the Project; and

WHEREAS as a precautionary measure, ABI is arranging to have its computer servers "mirrored" off-site;

WHEREAS ABI and 716 share a commitment to ensure that the Project is completed safely and without impairment of the party wall; and

WHEREAS 716 acknowledges that the Project may impact the use and enjoyment of the Alaska Building by its tenants and occupants during certain stages of the Project and although such impacts may not be actionable, 716 stands ready to make the following commitments to ameliorate such impact and ABI is willing to accept such commitments as a reasonable accommodation of its concerns; and

WHEREAS the Parties desire to make certain specific mutual commitments regarding the Project, to avoid conflict during the Project.

NOW THEREFORE in consideration for the mutual commitments contained herein, the Parties agree as follows:

1. Reimbursement for Professional Fees:

In consideration for the professional time required to address preparation for the Project, within five (5) business days of execution of this Agreement 716 shall remit a one-time, lump sum payment in the amount of Fifteen Thousand and 00/100 Dollars (\$15,000.00) to ABI. This payment shall be in full satisfaction of any action, cause of action, suit, controversy, claim, damage, and demand of every kind and nature, mature or to mature in the future, for professional fees related to the Project, including but not limited to legal fees, appraisal fees, fees for other representation, and engineering fees, with the exception of such fees incurred in addressing a Catastrophic Event, as such term is defined below. 716 shall not reimburse or otherwise pay for professional fees incurred by ABI or its affiliates, including but not limited to BBFM, during the course of the Project or related to the Project, except as awarded by a court of competent jurisdiction.

2. Reimbursement for Server Mirroring:

In consideration for the back-up server mirroring work which will be completed to assure the availability and safety of electronic information for ABI and Alaska Building tenants during the Project, 716 agrees to reimburse in full the costs of such work as invoiced to ABI by a consultant of ABI's choosing, up to a maximum reimbursement amount of Ten Thousand and 00/100 Dollars (\$10,000.00). This payment shall be in full satisfaction of any action, cause of action, suit, controversy, claim, damage, and demand of every kind and nature, mature or to mature in the future, rising out of or relating to issues with ABI's computer servers or electronic information during or otherwise related to the Project. ABI represents and warrants that this waiver shall extend to any and all entities with an interest in the server in the Alaska Building, including but not limited to Touch N' Go Systems, Inc., and ABI shall save and indemnify 716 from any and all complaints or claims by such entities.

3. Reimbursement for Rent Abatement:

In consideration for the potential disruption to tenant activity in the Alaska Building during the Project, and for the waiver of any future claims related to such disruption, as set forth herein, within five (5) business days of execution of waiver agreements by the tenants as set forth herein 716 shall offer to remit to ABI's tenants one-time, lump sum rent abatement payments in the following amounts: Two Thousand Dollars and 00/100 (\$2,000.00) for Jim Gottstein, Two Thousand Nine Hundred and Fifty and 00/100 Dollars (\$2,950.00) for Alaska Center for the Environment, One Thousand Three Hundred Seventy Five and 00/100 Dollars (\$1,375.00) for Partners for Progress, and One Thousand Two Hundred and 00/100 Dollars (\$1,200.00) for Blu Menswear. Should the tenant(s) accept, this payment shall be in full satisfaction of any action, cause of action, suit, controversy, claim, damage, and demand of every kind and nature, mature or to mature in the future, rising out of or relating to disruption of tenant activity in the Alaska Building during the duration of the Project for such tenant(s), both by ABI and by any and all tenants leasing space in the Alaska Building; and each tenant shall execute a waiver in the form attached as Attachment C prior to receipt of a rent abatement payment. Upon execution of this Agreement ABI shall notify the tenants of this rent abatement offer, which shall remain open to each tenant until January 5, 2014. Interested tenants shall contact Shea Simasko (646-4644; SSimasko@PfefferDevelopment.com) directly to arrange the transaction details of their abatement payment.

4. Lease of Blu Menswear Space:

Commencing on January 1, 2014, the Parties agree that Criterion General shall lease the ground floor space in the Alaska Building currently occupied by Blu Menswear, with a street address of 706 W. 4th Avenue, for a project office for a term of one (1) year at \$1,200 per month. Such lease shall be in the form attached to this Agreement as Attachment B.

5. Access; Reimbursement for Use of Parking:

716 shall maintain safe, secure, and clean pedestrian access to the Alaska Building at all times during the Project. ABI leases its alley parking spaces located adjacent to the Alaska Building for any purpose related to the Project in return for a monthly rental of Three Hundred Dollars and 00/100 (\$300.00) per month for each month until the end of the month following the month 716 gives notice that it no longer needs such spaces and that they are available for use and open for access by ABI. This payment shall be in full satisfaction of any action, cause of action, suit, controversy, claim, damage, and demand of every kind and nature, mature or to mature in the future, rising out of or relating to 716's use of these parking spaces.

6. License:

Subject to the terms of this Agreement, ABI grants to 716 and its agents, employees, contractors, and subcontractors a limited license to all reasonably required access to the ABI Property and the Alaska Building, with reasonable notice to ABI and at reasonable times, for the purpose of planning and implementing the Project, and of minimizing any impacts of the Project on the Alaska Building.

7. Party Wall:

Upon execution of this Agreement, 716 shall arrange for the installation of survey points on the Party Wall for the purpose of monitoring any movement of the Party Wall during the Project as set forth in Attachment D. 716 shall arrange for monitoring of these survey points on a weekly basis for the duration of the Project. All monitoring information shall be equally available to and accessible by representatives of 716 and ABI, including but not limited to BBFM.

716 shall exercise due care consistent with its obligations under the Party Wall Agreement and common law to preserve the Party Wall during the Project. The Party Wall will remain governed by the Party Wall Agreement. Portions of the eastern wall of the Empress Theater not shared by the Empress Theater and the Alaska Building and not included within the scope of the Party Wall Agreement may be removed during the Project in 716's discretion.

8. Walkway and Generator Easements:

The walkway and generator easement as recorded at Book 10, Page 83, on July 13, 1923, and at Book 42, Page 66, on July 28, 1944 shall not be affected by this Agreement.

9. Coordination with BBFM:

Throughout the duration of the Project, 716 shall apprise BBFM of planned elements of the Project which will impact the Party Wall. 716 shall endeavor to give BBFM reasonable advance notice of any and all such work and shall provide BBFM with the opportunity to observe such work as requested.

10. Indemnity:

The contractor employed by 716 to complete the Project, Criterion General, Inc. located at 2820 Commercial Drive Anchorage, Alaska 99501 (the "Contractor"), shall defend, indemnify and hold harmless ABI and its, tenants, agents and employees from and against all claims, damages, losses and expenses including interest, costs and attorneys' fees arising out of or resulting from the performance of any work on the ABI Property or on the Party Wall, provided that any such claim, damage, loss or expense is caused in whole or in part by any negligent act or omission of the contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. The contractor need not indemnify ABI for ABI's sole negligence; however, this indemnification shall apply to circumstances of combined fault.

In any and all claims against ABI or any of their agents or employees by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.

Contractor will maintain the insurance coverages as attached in Attachment A.

11. Use of Hazardous Materials on the Project:

Compliance with Environmental Laws: Contractor covenants full compliance with any applicable federal, state, or local environmental statute, regulation, or ordinance presently in effect or that may be amended or effective in the future regarding the handling of hazardous materials.

Contractor shall not cause or permit any hazardous material to be brought upon, kept, or used in or about the 716 Property or the ABI Property (collectively, the "Properties") by Contractor, or its authorized representatives or invitees, except for such hazardous material as is necessary or useful to Contractor's work on the Project and handled in accordance with applicable law..

Any hazardous material permitted on the Properties as provided in this paragraph, and all containers therefore, shall be used, kept, stored, and disposed of in a

manner that complies with all laws or regulations applicable to any such hazardous material.

Contractor shall not discharge, leak or emit, or permit to be discharged, leaked, or emitted, any material into the atmosphere, ground, sewer system, or any body of water if such material (as reasonably determined by the Parties or any governmental authority) does or may pollute or contaminate the same, or may adversely affect (1) the health, welfare, or safety of persons, whether located on the project or elsewhere, or (2) the condition, use, or enjoyment of the Properties or any other real or personal property.

Contractor specifically agrees to report all releases, threatened releases, discharges, spills, or disposal of hazardous substances, in whatever quantity, immediately to the appropriate regulatory authorities and simultaneously to the Parties, and to keep the Parties fully informed of any communication between Contractor and any person or agency concerning potential environmental contamination and hazardous substances.

Contractor hereby agrees that it shall be fully liable for all costs and expenses related to the use, storage, and disposal of hazardous material kept on the Properties by Contractor, or its authorized representatives and invitees.

12. Catastrophic Event(s):

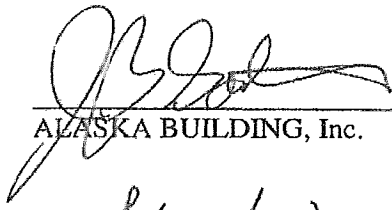
A "Catastrophic Event" shall be any of the following: (i) an event of structural or physical damage to the Alaska Building, alleged to be caused in part or entirely by the actions and or omissions of 716, its contractors, employees or agents during the Project or as a result of acts or omissions that took place during the Project but manifested themselves after the Project; (ii) impacts to the use or occupancy of the Alaska Building as a result of any structural or physical damage to the Alaska Building; or (iii) any claim which would be covered by insurance carried by 716, its contractors, employees and agents.

13. General Provisions:

Time is of the essence with regard to each and every provision hereof. The captions to the sections of this Agreement are solely for convenience of reference and shall not in any way limit, amplify, or modify the provisions hereof. The invalidity or un-enforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and such provision shall be construed to most closely match the intent of such provision that is valid and enforceable. Each Party has had the opportunity to have this Agreement reviewed by counsel and the rule of construction or interpretation that ambiguities, if any, in a writing be construed against the drafter shall not apply to this Agreement. This is the entire agreement of the Parties pertaining to the subject matter hereof and

supersedes all or any other prior agreements and understandings between the Parties. No change or modification of this Agreement shall be valid unless the same be in writing and signed by both Parties.


AGREED TO THE FOREGOING THIS 4th DAY OF DECEMBER, 2013.



ALASKA BUILDING, Inc.
President

TITLE
12/4/2013

DATE

716 WEST FOURTH AVENUE, LLC


TITLE
12/5/13

DATE

AGREED TO AS TO LEASE (SECTION 4) INDEMNIFICATION AND INSURANCE
REQUIREMENTS (SECTIONS 10 AND 11) ONLY:



CRITERION GENERAL, Inc.
CONTRACTOR

VICE PRESIDENT

TITLE

12/5/13

DATE

Attachment A

Insurance

1. The CONTRACTOR is to provide the Alaska Building with a certificate of insurance **prior** to commencement of construction. *All insurance policies shall contain a provision that the coverages afforded thereunder shall not be cancelled or not renewed, nor restrictive modifications added, until at least thirty (30) calendar days' prior written notice has been given to the Certificate Holder.* The certificate shall include items A-F as noted below.

- A. General Liability
- | | |
|-------------------------------|-------------|
| General Aggregate | \$2,000,000 |
| Products/Completed Operations | \$1,000,000 |
| Personal/Advertising | \$1,000,000 |
| Each Occurrence | \$1,000,000 |
| Damage to Owner's Premises | \$100,000 |
| Medical Expense | \$5,000 |
| Umbrella Coverage | \$3,000,000 |
- B. Automobile
- | | |
|-----------------------|-------------|
| Combined Single Limit | \$1,000,000 |
|-----------------------|-------------|
- C. Workers' Compensation
- | | |
|-----------------------------|-----------|
| Workers' Compensation | Statutory |
| EL - Each Accident | \$500,000 |
| EL - Disease, Policy Limit | \$500,000 |
| EL - Disease, each Employee | \$500,000 |
- D. Alaska Building, Inc. shall be added as an additional insured under the insurance (except Workers' Compensation) and all named as certificate holders.
- E. Provide a Waiver of Subrogation provision on the Workers' Compensation. (If applicable)
- F. Auto insurance should apply to owned, non-owned and hired auto exposure of the contractor and subcontractors working on the project.

Attachment C

Tenant Acknowledgement and Waiver

This Acknowledgement and Waiver (the "Agreement") is made effective this 16th day of December, 2013 by Law Offices of Jerry H. Bill a Sole Proprietorship ("Tenant") in favor of 716 West Fourth Avenue, LLC ("716"), an Alaska limited liability company, whose address is 737 W. 5th Ave., Anchorage, Alaska 99501.

RECITALS

WHEREAS Tenant leases certain space (the "Space") designated space # 206 in the building commonly referred to as the "Alaska Building," located at the intersection of 4th Avenue and G Street in Anchorage, on the property fully described as:

Lot One (1), and the East 10 1/2 feet of Lot Two (2), Block Forty (40) of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska (the "ABI Property"); and

WHEREAS 716 West Fourth Avenue, LLC ("716") is the owner of that property located adjacent to the Alaska Building on 4th Avenue in Anchorage, and fully described as:

The West 39 and 1/2 feet of Lot Two (2), Block Forty (40) of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska (the "716 Property"); and

WHEREAS 716 will undertake a comprehensive reconstruction of the structure on the 716 Property, with such work slated to commence in November, 2013 (such reconstruction work, the "Project"); and

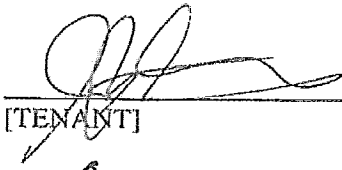
WHEREAS 716 has agreed to provide funds for preemptive rent abatement to Tenant, regardless of the actual degree of disturbance Tenant experiences during the Project; and

WHEREAS in consideration for this preemptive rent abatement, Tenant desires to grant certain waivers to 716.

NOW THEREFORE Tenant agrees as follows:

Tenant hereby waives any action, cause of action, suit, controversy, claim, damage, and demand of every kind and nature, mature or to mature in the future, rising out of or relating to disruption of Tenant activity in the Alaska Building during the duration of the Project as against 716, with the exception of any such claim arising out of a Catastrophic Event directly impacting the Tenant's leased space within the Alaska Building. A "Catastrophic Event" shall be any of the following: (i) an event of structural or physical damage to the Alaska Building, alleged to be caused in part or entirely by the actions and or omissions of 716, its contractors, employees or agents during the Project or as a result of acts or omissions that took place during the Project but manifested itself after the Project; (ii) impacts to the use or occupancy of the Alaska Building as a result of any structural or physical damage to the Alaska Building; or (iii) any claim which would be covered by insurance carried by 716, its contractors, employees and agents.

AGREED TO THE FOREGOING THIS ____ DAY OF DECEMBER, 2013.



[TENANT]

Owner

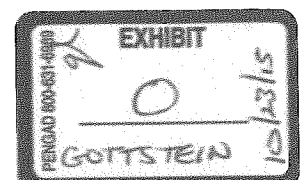
TITLE

12/6/2013

DATE

Summary of Agreement

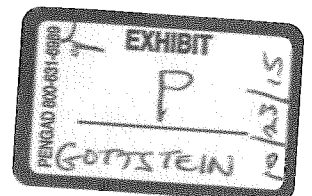
| <u>No</u> | <u>Item</u> | <u>\$'s Paid By Mark</u> | <u>Amount</u> |
|--------------|--|---|-----------------|
| 1 | One Time Professional Fees | \$10,000 | \$10,000 |
| 2 | Computer Mirroring | up to \$10,000 as invoiced | \$10,000 |
| 3a | Rent space for Jim's office | 4 months @ \$500/mo | \$2,000 |
| 3b | Alaska Center for Environment | Reduction: 1st = \$1000, 3 months @ \$650 | \$2,950 |
| 3c | Partners for Progress | Reduction: 1st = \$550, 3 months @ \$275 | \$1,350 |
| 3d | Blu Menswear | one month free @ \$1200 | \$1,200 |
| 4 | Lease "Blu" for a year | twelve months @ \$1200/mo | \$14,400 |
| 5 | Parking Space | twelve months @ \$300/mo | \$3,600 |
| Total | | | \$45,500 |
| 6 | ABI grants reasonable access during project | | |
| 7 | Mark pays for survey points and weekly monitoring during project | | ??? |
| 8 | Existing walkway and generator easements remain | | |
| 9 | BBFM will be provided plans and inspection rights | | |
| 10 | ABI will be fully indemnified during project | | |
| 11 | Hazardous material use/storage will comply with all laws | | |
| 12 | Mediation will cover all disputes, except catastrophic Brian Shortell selected as mediator \$1000 deposit to start process mediator decision final, except for catastrophic Less reasonable party pays mediation cost Tenants may access mediation (see addendum C) | | |



716 WEST FOURTH AVENUE, LLC and CRITERION GENERAL, INC.

Funding Amounts Summary
for
Access, Indemnification and Insurance Agreement
with
Alaska Building Inc. and Jim Gottstein

| | | | |
|------------|----------|------------------|--|
| Section 1. | \$15,000 | to ABI | from 716 |
| Section 2. | \$10,000 | to ABI | from 716 (assumes cost exceeds NTE amount) |
| Section 3. | \$ 2,000 | to Jim Gottstein | from 716 |
| Section 4. | \$14,400 | to ABI | from Criterion (12 months @ \$1,200/month) |
| Section 5. | \$3,900 | to ABI | from 716 (13 months @ \$300/month) |



1013

716 WEST FOURTH AVENUE, LLC425 G ST STE 210
ANCHORAGE, AK 99501
(907) 646 4644**NORTHRIM BANK**
ANCHORAGE, AK 99503
89-93-1252

12/5/2013

PAY TO THE
ORDER OF Alaska Building Inc.

\$**15,000.00

Fifteen Thousand and 00/100*****

DOLLARS

Alaska Building Inc.

MEMO


AUTHORIZED SIGNATURE

⑈001013⑈ ⑆125200934⑆7102082463⑈

716 WEST FOURTH AVENUE, LLC

1013

| | | | | | |
|----------------------|------|-----------|---------------|--------------|-----------|
| Alaska Building Inc. | | | | 12/5/2013 | |
| Date | Type | Reference | Original Amt. | Balance Due | Discount |
| 12/5/2013 | Bill | | 15,000.00 | 15,000.00 | |
| | | | | Check Amount | Payment |
| | | | | | 15,000.00 |

Northrim Bank 710208

15,000.00


716 WEST FOURTH AVENUE, LLC

1013

| | | | | | |
|----------------------|------|-----------|---------------|--------------|-----------|
| Alaska Building Inc. | | | | 12/5/2013 | |
| Date | Type | Reference | Original Amt. | Balance Due | Discount |
| 12/5/2013 | Bill | | 15,000.00 | 15,000.00 | |
| | | | | Check Amount | Payment |
| | | | | | 15,000.00 |

Northrim Bank 710208

15,000.00

 1-800-328-0304 www.deluxeforms.com

1014

716 WEST FOURTH AVENUE, LLC

425 G ST STE 210
ANCHORAGE, AK 99501
(907) 646-4644

NORTHRIM BANK
ANCHORAGE, AK 99503
69-93-1252

12/5/2013

PAY TO THE
ORDER OF Alaska Building Inc.

\$10,000.00**

Ten Thousand and 00/100*****

DOLLARS

Alaska Building Inc.

MEMO



AUTHORIZED SIGNATURE

⑈001014⑈ ⑆125200934⑆7102082463⑈

716 WEST FOURTH AVENUE, LLC

1014

| Alaska Building Inc. | | | 12/5/2013 | | | |
|----------------------|------|-----------|---------------|-------------|--------------|-----------|
| Date | Type | Reference | Original Amt. | Balance Due | Discount | Payment |
| 12/5/2013 | Bill | | 10,000.00 | 10,000.00 | | 10,000.00 |
| | | | | | Check Amount | 10,000.00 |

Northrim Bank 710208

10,000.00

716 WEST FOURTH AVENUE, LLC

1014

| Alaska Building Inc. | | | 12/5/2013 | | | |
|----------------------|------|-----------|---------------|-------------|--------------|-----------|
| Date | Type | Reference | Original Amt. | Balance Due | Discount | Payment |
| 12/5/2013 | Bill | | 10,000.00 | 10,000.00 | | 10,000.00 |
| | | | | | Check Amount | 10,000.00 |

Northrim Bank 710208

10,000.00

1016

716 WEST FOURTH AVENUE, LLC

425 G ST STE 210
ANCHORAGE, AK 99501
(907) 646-4644

NORTHRIM BANK
ANCHORAGE, AK 99503
89-93 1252

12/5/2013

PAY TO THE
ORDER OF Alaska Building Inc.

\$3,900.00**

Three Thousand Nine Hundred and 00/100*****

DOLLARS

Alaska Building Inc.

MEMO


AUTHORIZED SIGNATURE

⑈001016⑈ ⑆125200934⑆7102082463⑈

716 WEST FOURTH AVENUE, LLC

1016

| Alaska Building Inc. | | | | | 12/5/2013 | |
|----------------------|------|-----------|---------------|-------------|--------------|----------|
| Date | Type | Reference | Original Amt. | Balance Due | Discount | Payment |
| 12/5/2013 | Bill | | 3,900.00 | 3,900.00 | | 3,900.00 |
| | | | | | Check Amount | 3,900.00 |

Northrim Bank 710208

3,900.00


716 WEST FOURTH AVENUE, LLC

1016

| Alaska Building Inc. | | | | | 12/5/2013 | |
|----------------------|------|-----------|---------------|-------------|--------------|----------|
| Date | Type | Reference | Original Amt. | Balance Due | Discount | Payment |
| 12/5/2013 | Bill | | 3,900.00 | 3,900.00 | | 3,900.00 |
| | | | | | Check Amount | 3,900.00 |

Northrim Bank 710208

3,900.00

 **DeLUXE CORP** 1-800-328-0304 www.deluxeforms.com

1017

716 WEST FOURTH AVENUE, LLC

425 G ST STE 210
ANCHORAGE, AK 99501
(907) 646-4644

NORTHRIM BANK
ANCHORAGE, AK 99503
89-93-1252

12/5/2013

PAY TO THE
ORDER OF Jim Gottstein

\$**2,000.00

Two Thousand and 00/100*****

DOLLARS

Jim Gottstein

MEMO

AUTHORIZED SIGNATURE

⑈001017⑈ ⑆125200934⑆7102082463⑈

716 WEST FOURTH AVENUE, LLC

1017

| Jim Gottstein | | | | 12/5/2013 | |
|---------------|------|-----------|---------------|--------------|----------|
| Date | Type | Reference | Original Amt. | Balance Due | Discount |
| 12/5/2013 | Bill | | 2,000.00 | 2,000.00 | |
| | | | | Check Amount | Payment |
| | | | | | 2,000.00 |
| | | | | | 2,000.00 |

Northrim Bank 710208

2,000.00

716 WEST FOURTH AVENUE, LLC

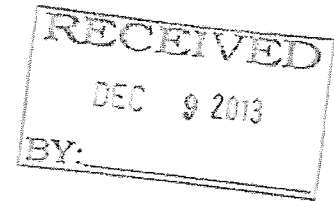
1017

| Jim Gottstein | | | | 12/5/2013 | |
|---------------|------|-----------|---------------|--------------|----------|
| Date | Type | Reference | Original Amt. | Balance Due | Discount |
| 12/5/2013 | Bill | | 2,000.00 | 2,000.00 | |
| | | | | Check Amount | Payment |
| | | | | | 2,000.00 |
| | | | | | 2,000.00 |

Northrim Bank 710208

2,000.00

DELUXE CORP 1-800-328-0304 www.deluxeforms.com



December 4, 2013

Law Office of James B. Gottstein
406 G Street, Suite 206
Anchorage, Alaska 99501

Dear Mr. Gottstein:

Enclosed is our check #89827 dated December 4, 2013 in the amount of \$14,400.00. This amount covers the rent of office space for the period of January 1, 2014 through December 31, 2014. This office space of approximately 700 square feet is located at 706 W. 4th Avenue, first floor.

Thank you.

Very truly yours,

Dave DeRoberts
Project Manager
daved@criteriongeneral.com

enc.

xc w/enc: File 720.20

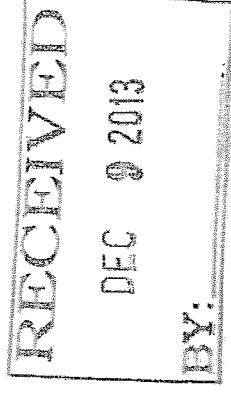


89827

CRITERION GENERAL, INC.

Record#: 18108
Check#: 89827
Date: 12/04/2013
Description: Lease/406 G St. Suite 206
Amount: 14,400.00
Vendor#: 7014
Payee: ALASKA BUILDING, INC.

Address:



CRITERION GENERAL, INC.

2820 COMMERCIAL DR.
ANCHORAGE, AK 99501-3015
(907) 277-3200

KeyBank of Alaska
2401 AK

89-87-1252



89827

EXACTLY FOURTEEN THOUSAND FOUR HUNDRED DOLLARS

PAY
TO THE
ORDER
OF

ALASKA BUILDING, INC.

DATE

12/04/2013

AMOUNT

*****\$14,400.00

David Roberts
David Roberts

AUTHORIZED SIGNATURE

Memo: Lease/406 G St. Suite 206

⑈089827⑈ ⑆125200879⑆ 020122011891⑈

Security Features. Details on back.

Attachment C

Tenant Acknowledgement and Waiver

This Acknowledgement and Waiver (the "Agreement") is made effective this ²⁰¹⁴ 6th day of January 2013 by Partners for Progress a non-profit corporation ("Tenant") in favor of 716 West Fourth Avenue, LLC ("716"), an Alaska limited liability company, whose address is 737 W. 5th Ave., Anchorage, Alaska 99501.

RECITALS

WHEREAS Tenant leases certain space (the "Space") designated space # Ste. 302 in the building commonly referred to as the "Alaska Building," located at the intersection of 4th Avenue and G Street in Anchorage, on the property fully described as:

Lot One (1), and the East 10 1/2 feet of Lot Two (2), Block Forty (40) of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska (the "ABI Property"); and

WHEREAS 716 West Fourth Avenue, LLC ("716") is the owner of that property located adjacent to the Alaska Building on 4th Avenue in Anchorage, and fully described as:

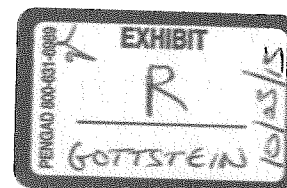
The West 39 and 1/2 feet of Lot Two (2), Block Forty (40) of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska (the "716 Property"); and

WHEREAS 716 will undertake a comprehensive reconstruction of the structure on the 716 Property, with such work slated to commence in November, 2013 (such reconstruction work, the "Project"); and

WHEREAS 716 has agreed to provide funds for preemptive rent abatement to Tenant, regardless of the actual degree of disturbance Tenant experiences during the Project; and

WHEREAS in consideration for this preemptive rent abatement, Tenant desires to grant certain waivers to 716.

NOW THEREFORE Tenant agrees as follows:



Tenant hereby waives any action, cause of action, suit, controversy, claim, damage, and demand of every kind and nature, mature or to mature in the future, rising out of or relating to disruption of Tenant activity in the Alaska Building during the duration of the Project as against 716, with the exception of any such claim arising out of a Catastrophic Event directly impacting the Tenant's leased space within the Alaska Building. A "Catastrophic Event" shall be any of the following: (i) an event of structural or physical damage to the Alaska Building, alleged to be caused in part or entirely by the actions and or omissions of 716, its contractors, employees or agents during the Project or as a result of acts or omissions that took place during the Project but manifested itself after the Project; (ii) impacts to the use or occupancy of the Alaska Building as a result of any structural or physical damage to the Alaska Building; or (iii) any claim which would be covered by insurance carried by 716, its contractors, employees and agents.

AGREED TO THE FOREGOING THIS 6th DAY OF ~~DECEMBER~~ ^{JANUARY 2014}, 2013.

PARTNERS FOR PROGRESS, Glenn F. Waddoups
[TENANT]

CLARE WADDOUN, EXEC. DIRECTOR.
TITLE

1/6/2014.
DATE

716 WEST FOURTH AVENUE, LLC

425 G ST. STE 210
ANCHORAGE, AK 99501
(907)646-4644

WELLS FARGO BANK, N.A.
ANCHORAGE, ALASKA
89-5-1252

1/9/2014

PAY TO THE
ORDER OF Partners for Prograss

\$**1,375.00

One Thousand Three Hundred Seventy-Five and 00/100*****

DOLLARS

Partners for Prograss
406 G Street #302
Anchorage AK 99501

MEMO

Rent Abatement

[Signature]
AUTHORIZED SIGNATURE

⑈001029⑈ ⑆125200057⑆5793249904⑈

716 WEST FOURTH AVENUE, LLC

1029

Partners for Prograss

| Date | Type | Reference | Original Amt. | Balance Due | 1/9/2014 Discount | Payment |
|----------|------|-----------|---------------|-------------|----------------------|----------|
| 1/9/2014 | Bill | | 1,375.00 | 1,375.00 | | 1,375.00 |
| | | | | | Check Amount | 1,375.00 |

Wells Fargo 5793249 Rent Abatement

1,375.00

716 WEST FOURTH AVENUE, LLC

1029

Partners for Prograss

| Date | Type | Reference | Original Amt. | Balance Due | 1/9/2014 Discount | Payment |
|----------|------|-----------|---------------|-------------|----------------------|----------|
| 1/9/2014 | Bill | | 1,375.00 | 1,375.00 | | 1,375.00 |
| | | | | | Check Amount | 1,375.00 |

Wells Fargo 5793249 Rent Abatement

1,375.00

Attachment C

Tenant Acknowledgement and Waiver

This Acknowledgement and Waiver (the "Agreement") is made effective this 6 day of January, 2014 by Alaska Center for Environmental and Profit 501c3 ("Tenant") in favor of 716 West Fourth Avenue, LLC ("716"), an Alaska limited liability company, whose address is 737 W. 5th Ave., Anchorage, Alaska 99501.

RECITALS

WHEREAS Tenant leases certain space (the "Space") designated space # 212 in the building commonly referred to as the "Alaska Building" located at the intersection of 4th Avenue and G Street in Anchorage, on the property fully described as:

Lot One (1), and the East 10 1/2 feet of Lot Two (2), Block Forty (40) of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska (the "ABI Property"); and

WHEREAS 716 West Fourth Avenue, LLC ("716") is the owner of that property located adjacent to the Alaska Building on 4th Avenue in Anchorage, and fully described as:

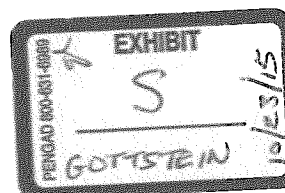
The West 39 and 1/2 feet of Lot Two (2), Block Forty (40) of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska (the "716 Property"); and

WHEREAS 716 will undertake a comprehensive reconstruction of the structure on the 716 Property, with such work slated to commence in November, 2013 (such reconstruction work, the "Project"); and

WHEREAS 716 has agreed to provide funds for preemptive rent abatement to Tenant, regardless of the actual degree of disturbance Tenant experiences during the Project; and

WHEREAS in consideration for this preemptive rent abatement, Tenant desires to grant certain waivers to 716.

NOW THEREFORE Tenant agrees as follows:



Tenant hereby waives any action, cause of action, suit, controversy, claim, damage, and demand of every kind and nature, mature or to mature in the future, rising out of or relating to disruption of Tenant activity in the Alaska Building during the duration of the Project as against 716, with the exception of any such claim arising out of a Catastrophic Event directly impacting the Tenant's leased space within the Alaska Building. A "Catastrophic Event" shall be any of the following: (i) an event of structural or physical damage to the Alaska Building, alleged to be caused in part or entirely by the actions and or omissions of 716, its contractors, employees or agents during the Project or as a result of acts or omissions that took place during the Project but manifested itself after the Project; (ii) impacts to the use or occupancy of the Alaska Building as a result of any structural or physical damage to the Alaska Building; or (iii) any claim which would be covered by insurance carried by 716, its contractors, employees and agents.

AGREED TO THE FOREGOING THIS 6 DAY OF ~~DECEMBER~~, 2013.

January 2014

Pull a

[TENANT]

Executive Director, Alaska Center for the Environment

TITLE

1/7/14

DATE

716 WEST FOURTH AVENUE, LLC

425 G ST. STE 210
ANCHORAGE, AK 99501
(907)646-4644

WELLS FARGO BANK, N.A.
ANCHORAGE, ALASKA
89-5-1252

1/9/2014

PAY TO THE
ORDER OF Alaska Center for Environment

\$**2,950.00

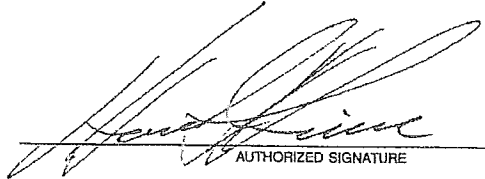
Two Thousand Nine Hundred Fifty and 00/100*****

DOLLARS

Alaska Center for Environment
921 W 6th Ave #200
Anchorage Ak 99501

MEMO

Rent Abatement



AUTHORIZED SIGNATURE

⑈001027⑈ ⑆125200057⑆5793249904⑈

716 WEST FOURTH AVENUE, LLC

1027

Alaska Center for Environment

| Date | Type | Reference | Original Amt. | Balance Due | 1/9/2014 Discount | Payment |
|----------|------|-----------|---------------|-------------|----------------------|----------|
| 1/9/2014 | Bill | | 2,950.00 | 2,950.00 | | 2,950.00 |
| | | | | | Check Amount | 2,950.00 |

Wells Fargo 5793249 Rent Abatement

2,950.00

716 WEST FOURTH AVENUE, LLC

1027

Alaska Center for Environment

| Date | Type | Reference | Original Amt. | Balance Due | 1/9/2014 Discount | Payment |
|----------|------|-----------|---------------|-------------|----------------------|----------|
| 1/9/2014 | Bill | | 2,950.00 | 2,950.00 | | 2,950.00 |
| | | | | | Check Amount | 2,950.00 |

Wells Fargo 5793249 Rent Abatement

2,950.00

From: "Jim Gottstein" <jbg@alaskabldg.com>
To: "DaveD@criteriongeneral.com" <DaveD@criteriongeneral.com>, "Bob O'Neill" <BOneill@PfefferDevelopment.com>, "Mark Pfeffer" <MPfeffer@PfefferDevelopment.com>
Cc: "jbg@alaskabldg.com" <jbg@alaskabldg.com>, "Dennis Berry" <dberry@bbfm.com>
Subject: Alaska Building Claim

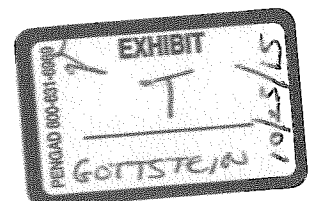
Dear Messrs. DeRoberts, O'Neill & Pfeffer:

Please find attached the claim for damage to the Alaska Building (Claim) as a result of your Legislative Information Office demolition and reconstruction project (Project).

As the Claim documents, there has been substantial damage to the Alaska Building as a result of your Project, including structural degradation. I have discussed this with Mr. Berry and he made the observation that the Alaska Building will continue to shift and move around to adapt to the displaced Party Wall for some time. He also indicates that in his opinion the \$250,000 claimed is reasonable.

From my perspective I don't see why the Alaska Building should bear any loss or damage as a result of your project. The offer represented by this Claim may be withdrawn at any time prior to acceptance by you.

Jim Gottstein, President
Alaska Building, Inc.
Home of the AlaskaCam (r)
406 G Street, Suite 206
Anchorage, AK 99501
Tel: (907) 274-7686
Fax: (907) 274-9493
<http://alaskabldg.com>
jbg@alaskabldg.com<<mailto:jbg@alaskabldg.com>>





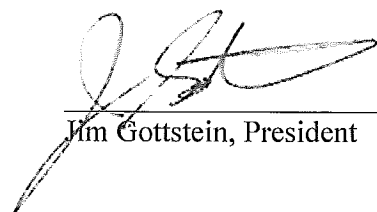
ALASKA BUILDING, INC.

406 G Street, Suite 206, Anchorage, Alaska 99501
(907) 274-7686 Phone ~ (907) 274-9493 Fax

Claim

To: 716 West Fourth Avenue, LLC & Criterion Construction
From: Alaska Building, Inc.
For: Damage from Legislative Information Office Building Reconstruction Project
Amount: \$250,000

Dated: January 23, 2015:



Jim Gottstein, President

**Known Damage to Alaska Building Caused by Old Empress Theater
Demolition & Construction of Elevator & Utility Tower for
Legislative Information Office Demolition and Reconstruction**

Chronology

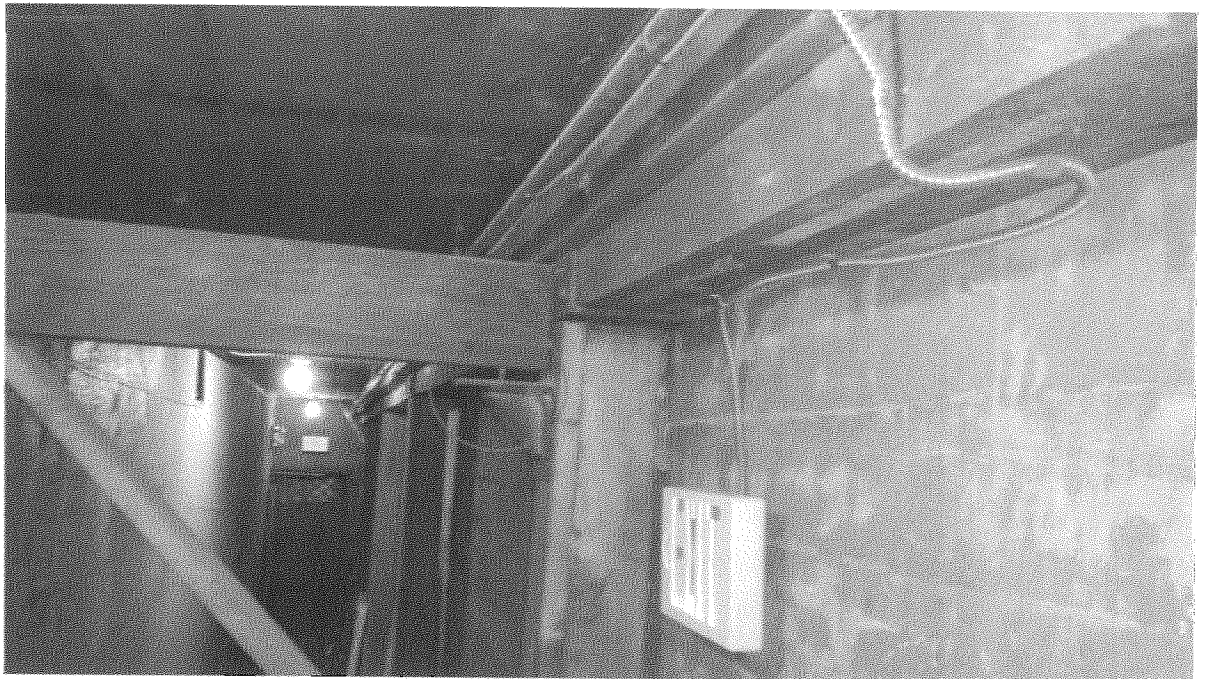
- There was a tremendous amount shaking during the demolition phase of the project.
- When the Old Empress Theater was demolished, the flashing protecting preventing water running down the Alaska Building side of the Party wall was removed and the roof membrane protecting it left open, exposing it to the elements. This was later discovered to have allowed water under the roof and into the building.
- On February 9th there was so much shaking that items fell off the shelves in Octopus Ink and broke. Criterion settled with Octopus Ink only.
- On February 24, 2014, the slab adjoining the party wall failed due to excavation of the basement of the Old Empress Theater, exposing a large void underneath the slab. The void was immediately filled with cement/grout due to extreme safety concerns. A review of the post/beam connection and door to the server room at the top of the internal stairs points to about an inch of downward movement of the wall and floor at the top of the stairs.
- On April 1, 2014, Shara of Octopus Ink reported that things had shifted around so much that the locks are no longer lining up, including that she is not strong enough to open the lock to the alley. Criterion adjusted the doors so they would lock/unlock.
- On April 3, 2014, Dennis Berry noted that the North end of the Party Wall had moved about an inch and Jim Gottstein noted a crack in the slab he hadn't noticed before.
- On May 14, 2014, the pounding removal of the braces caused so much shaking that Jim Gottstein went up and stopped the workers. The braces, which had been placed when it was close to or below 0 degrees Fahrenheit, had apparently expanded, and the workers were pounding them out. An inspection of the stairwell to 4th Avenue reveals that the party wall had moved to the West with significant resultant damage to the Alaska Building.
- From 4th Avenue the extent of the damage/wall movement is even more evident with about an inch of westward movement of the party wall at the top of the stairwell door.
- On May 17, 2014, Jim Gottstein noted that the pounding of the steel beams during the erection of the tower was causing severe shaking.
- Also on May 17, 2014, it was discovered that leaving the membrane covering the Party Wall on the North end open to the elements had caused water to collect under the roof.
- On June 25, 2014, a leak appeared behind the door to Jim Gottstein's office.
- On July 7, 2014, Jim Gottstein noticed a crack in his 4th avenue wall within a few feet of the Party Wall.
- On July 11, 2014, Jim Gottstein was informed that water was running down the Alaska Building on the South side of the Party Wall and had been for weeks.
- On July 25, 2014, water again was running down the Alaska Building side of the Party Wall during a period of heavy rain.
- On August 6, 2014, it appeared that the bracing from the slab failure was failing, indicating further settlement of the slab.
- On August 18, 2014, Jim Gottstein noticed that a couple of ceiling tiles below where the water had accumulated below the roof membrane were stained. The tiles were not stained before the project.
- On January 23, 2015: flashing above the 4th Avenue Stairway door had still not been replaced.

Photographs

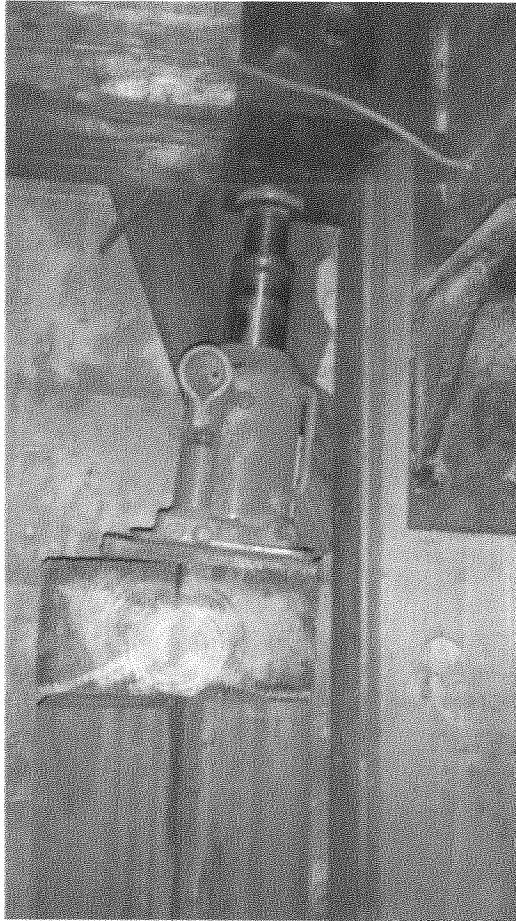
Slab Failure



February 24, 2014

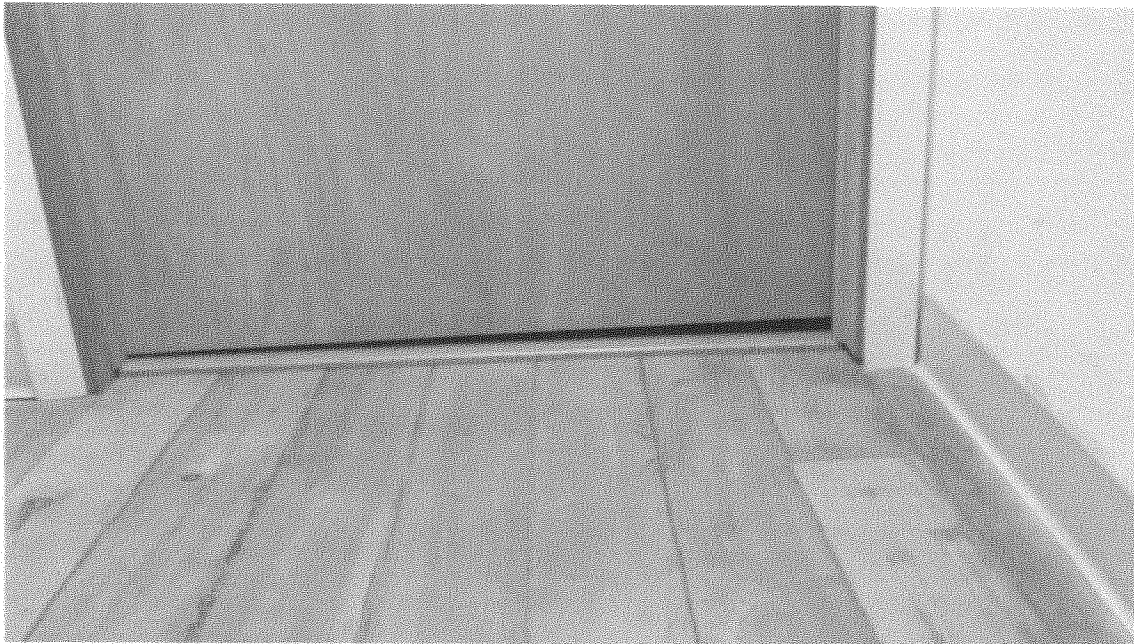


This shows where the post had dropped by what looks to be about an inch
February 24, 2014



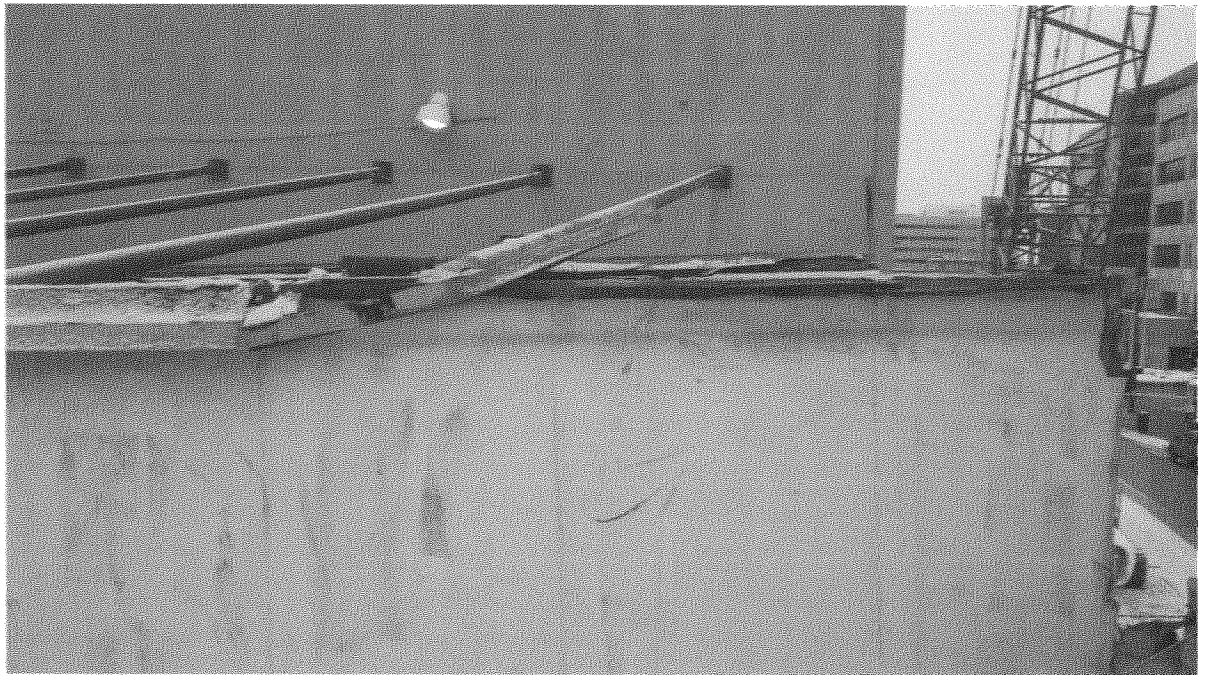
August 6, 2014 (Bracing failing)

Server Room Door at top of Stairs from Party Wall- (Shows Almost 1 Inch Drop in Floor)

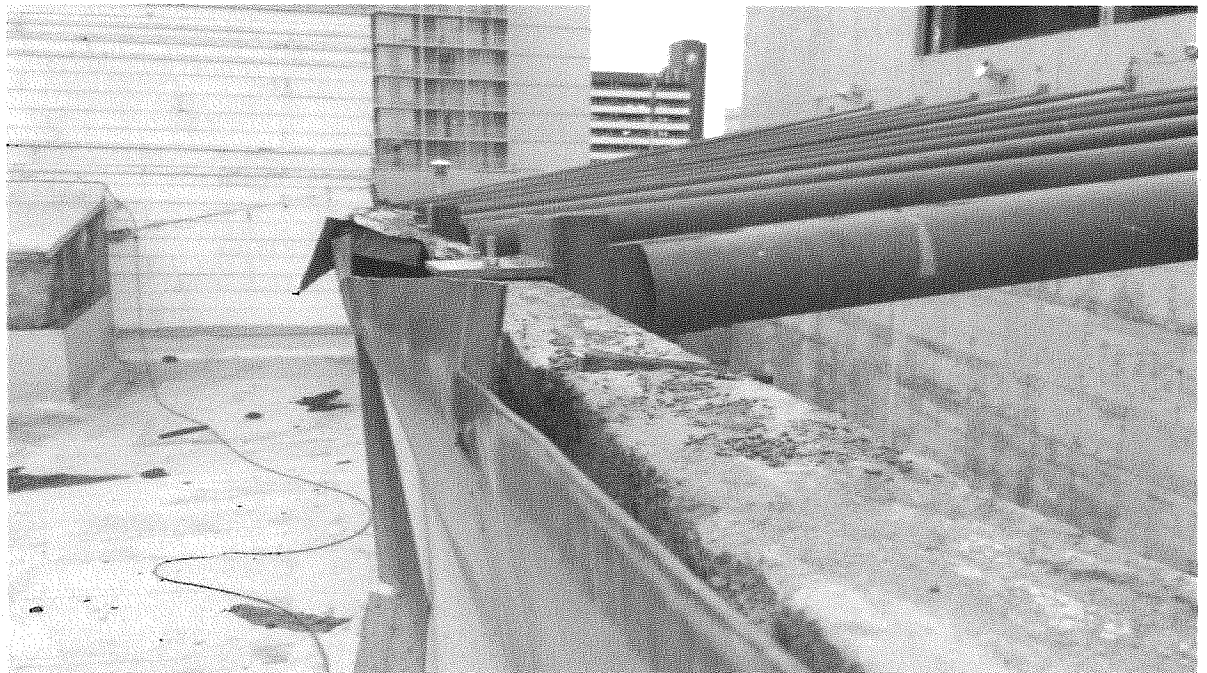


(January 20, 2015)

Roof



January 9, 2014



March 13, 2014



March 13, 2014



May 16, 2014



May 16, 2014



May 18, 2014

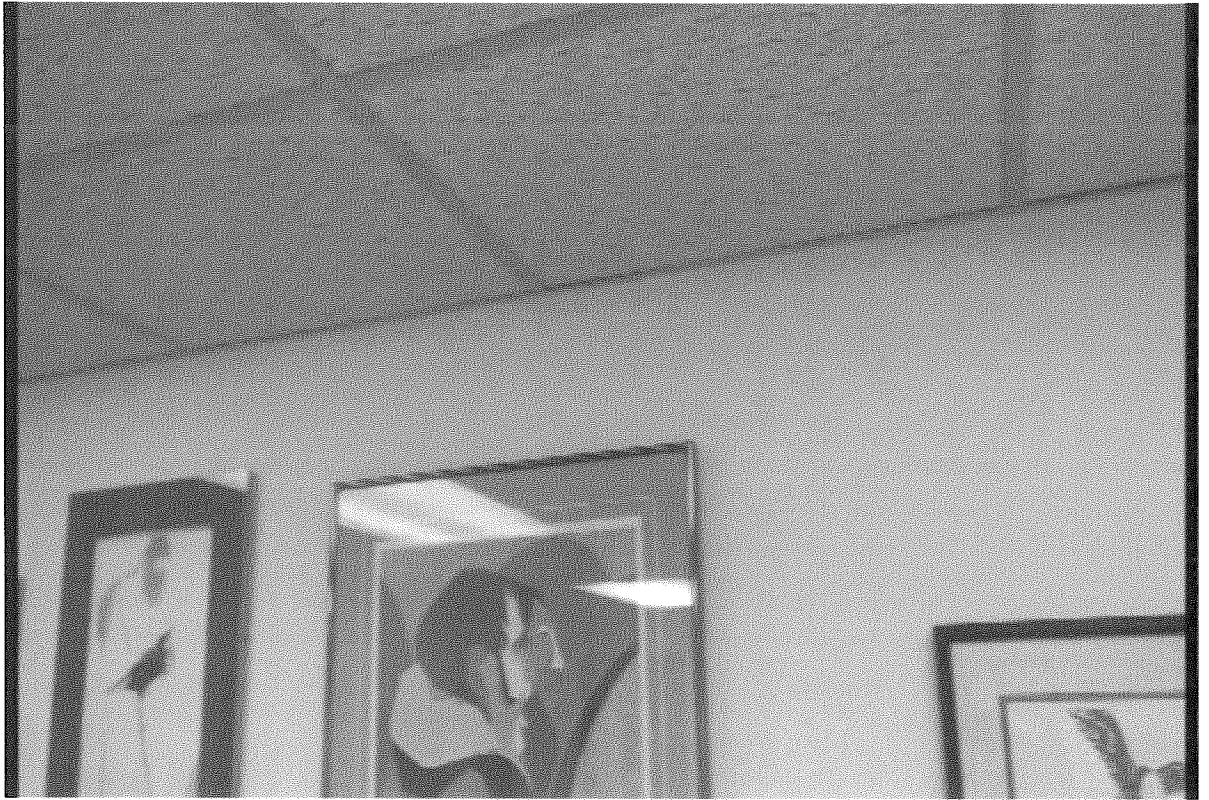


June 2, 2014



August 20, 2014

Ceiling Tile Stains/Water Damage



Unstained Ceiling Tiles December 1, 2013



August 17, 2014

Cracks in 4th Avenue Wall

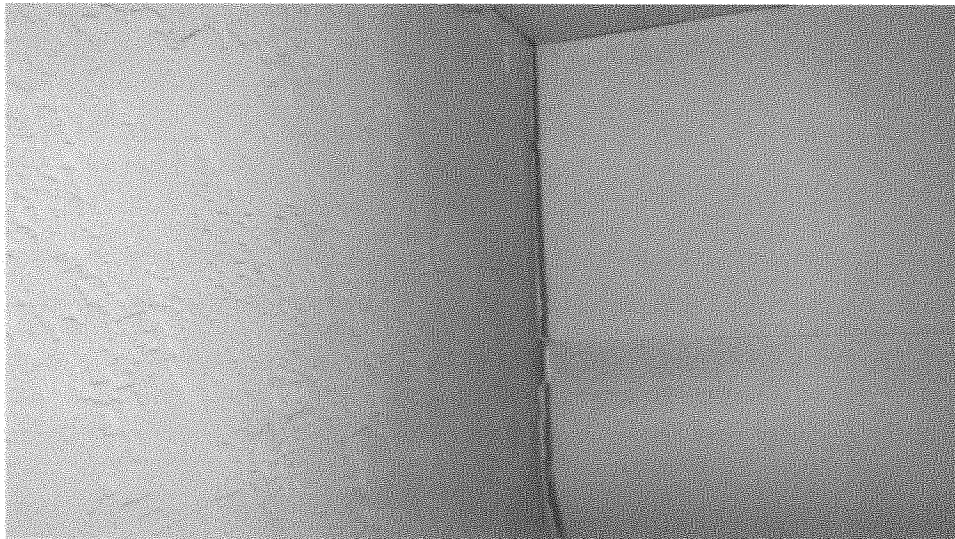
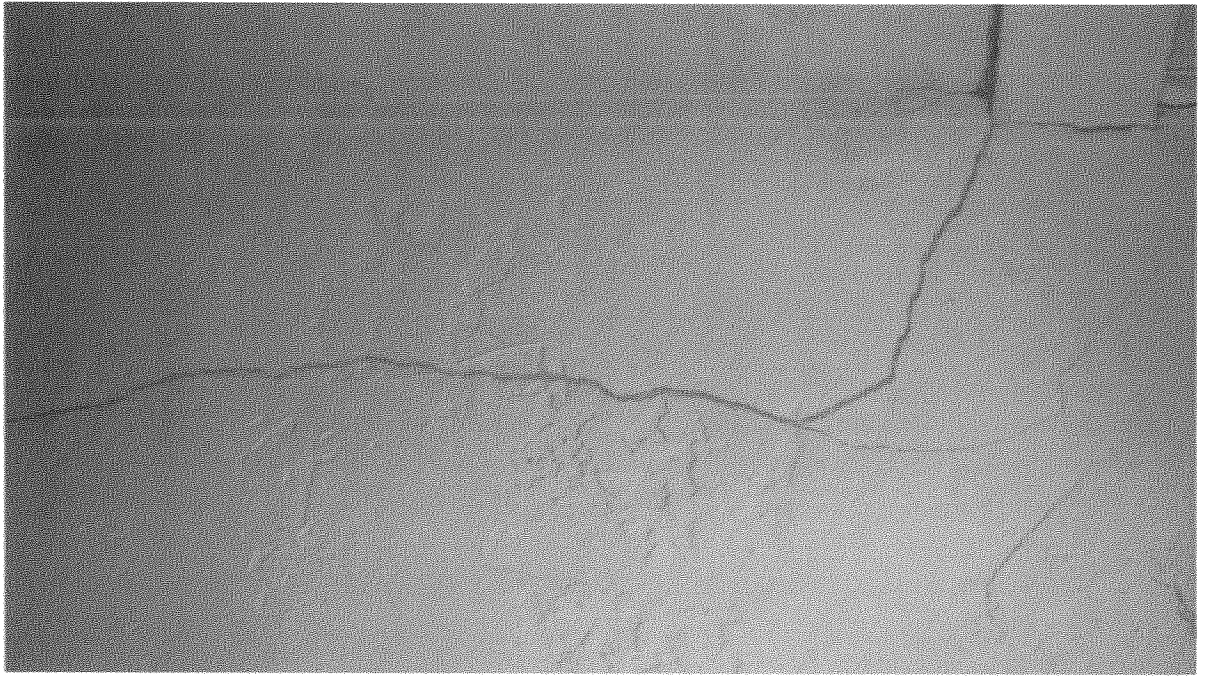


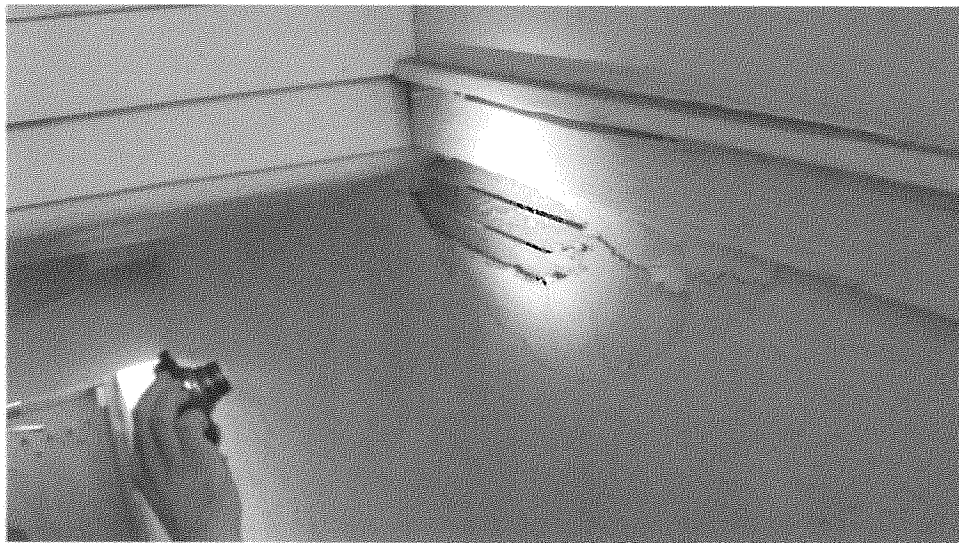
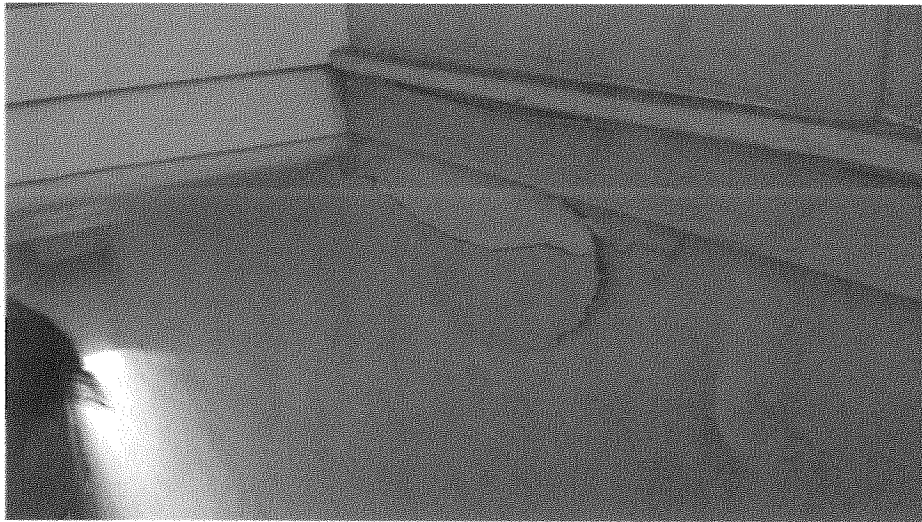
July 7, 2014



December 26, 2014

4th Avenue Stairwell (All Taken May 16, 2014)





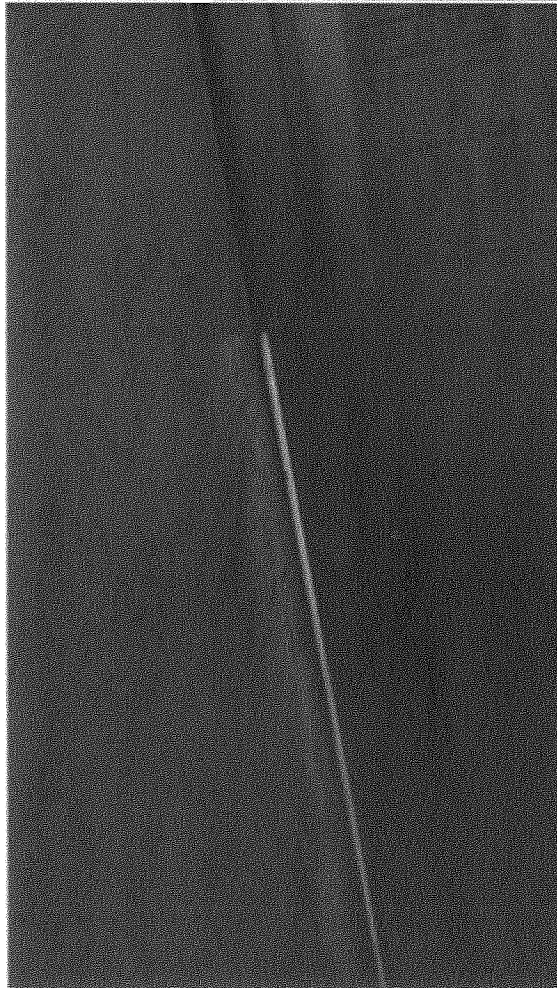


4th Ave Stairwell Door before Project





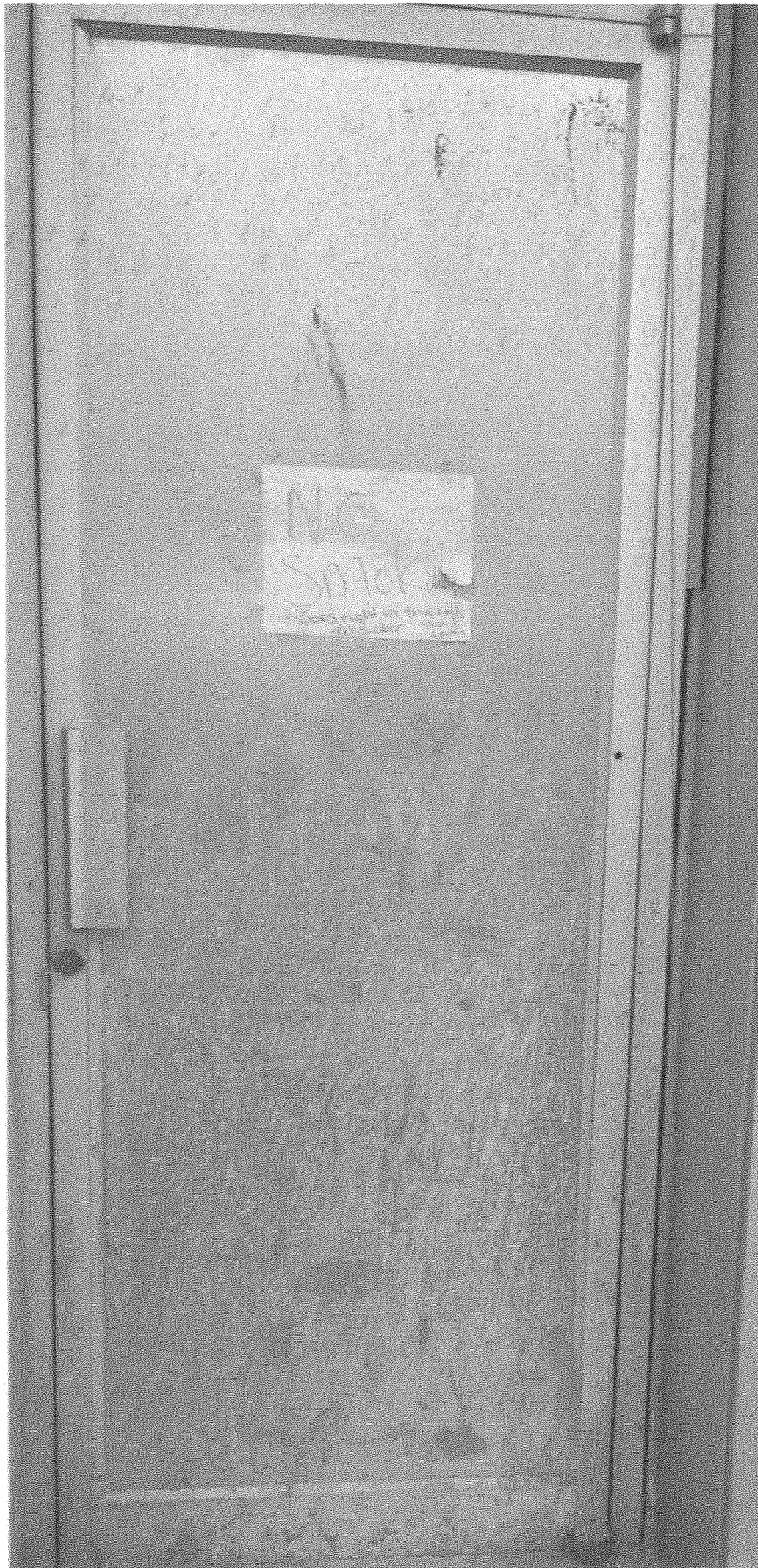
4th Avenue Stairwell Door after Project





The 4th Avenue Side of the Stairwell Door (January 9, 2015)

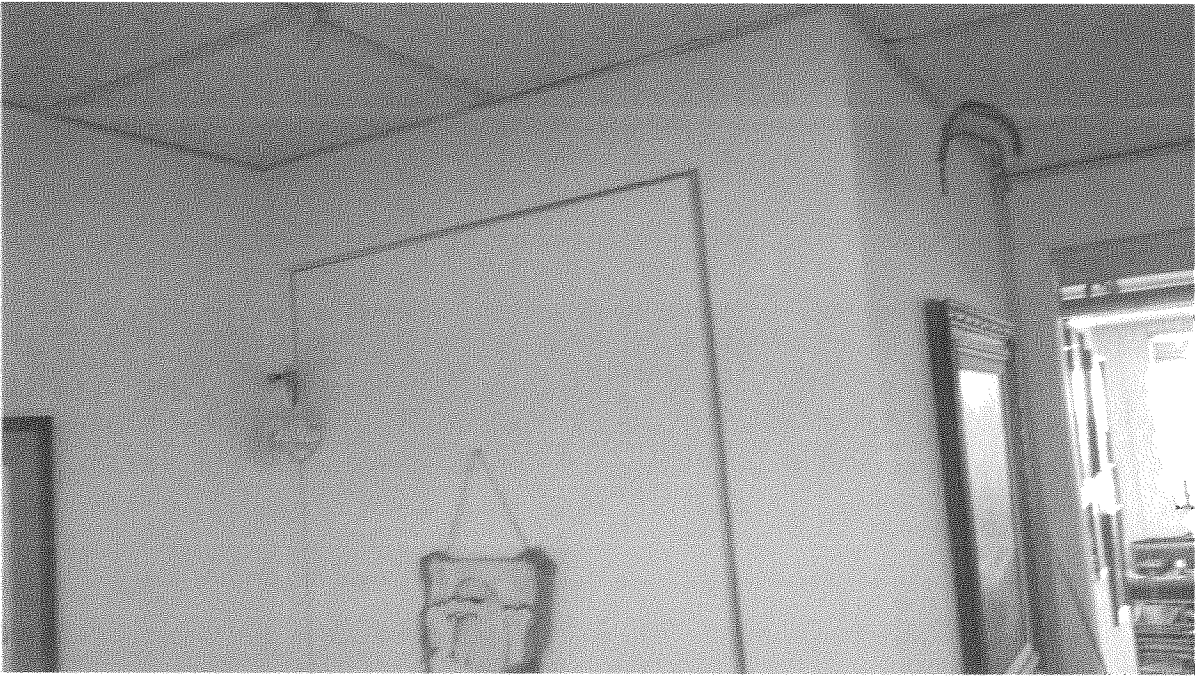




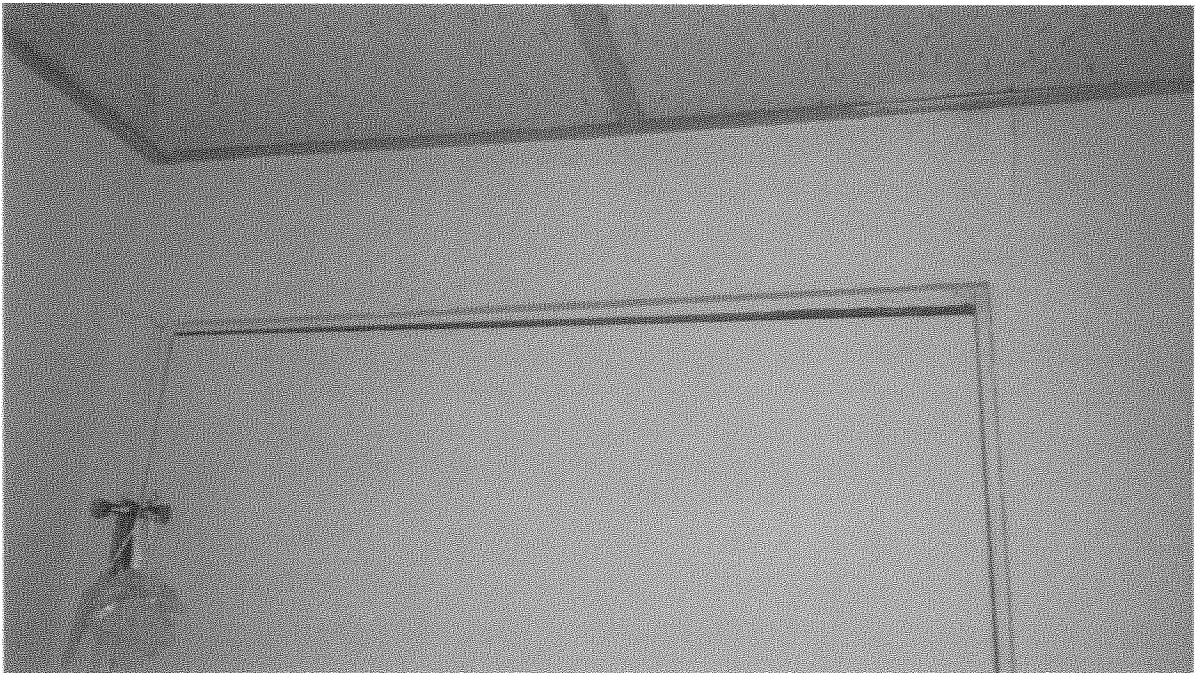
January 23, 2015



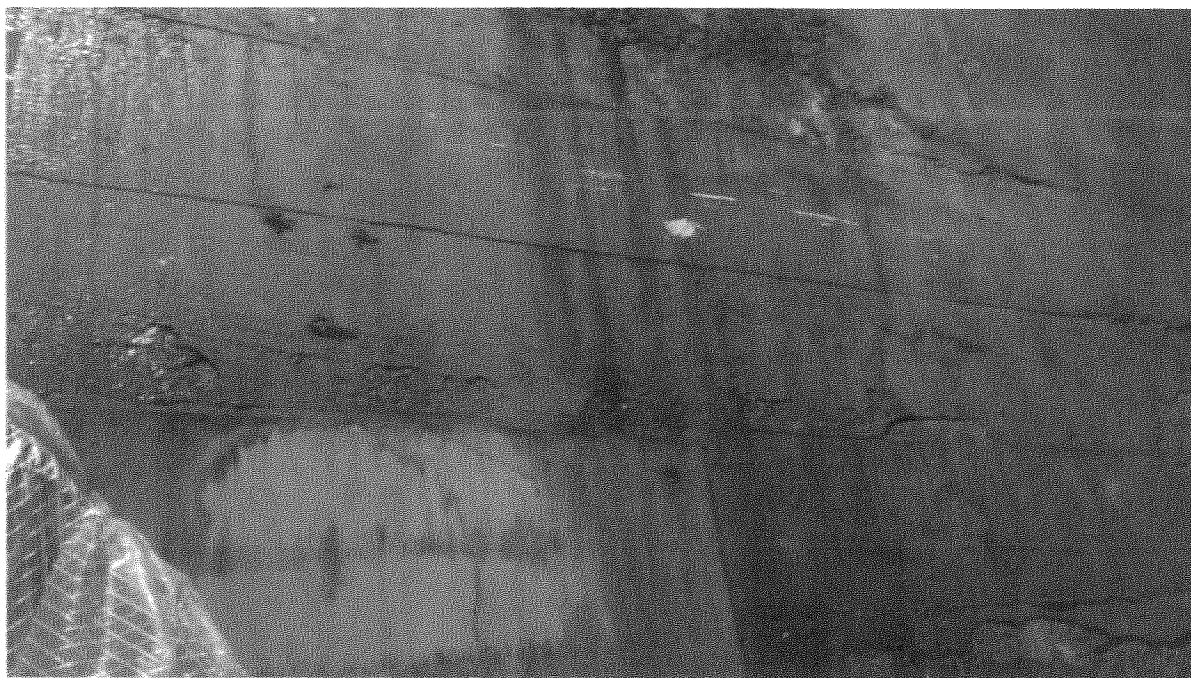
Top of 4th Avenue Stairwell Before Project



Top of 4th Avenue Stairwell on January 23, 2015



Party Wall Water



July 10, 2014



July 25, 2014



July 25, 2014



July 25, 2014



July 25, 2014



July 25, 2014 (may be upside down)



January 23, 2015

Alaska Dispatch News

Published on *Alaska Dispatch News* (<http://www.adn.com>)

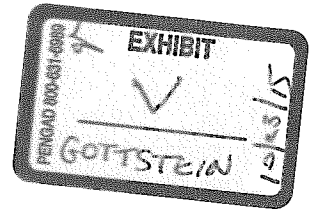
[Home](#) > Legislature reconsiders its Anchorage building as it hunts for more cuts

[Nathaniel Herz](#) ^[1]

March 28, 2015

Main Image:

[150109LIODSC_9776.JPG-1421023893](#) ^[2]



JUNEAU -- State lawmakers are exploring ways to reduce their own budget more deeply than an earlier version of their spending plan by cutting costs for their offices around the state -- including their pricey, recently remodeled Anchorage space.

A Senate panel met Friday and proposed cutting an additional \$1.5 million, or 2 percent, from the Legislature's \$75 million budget beyond a 4.5 percent initial cut already passed by the House.

The reductions are expected to go even deeper when the full Senate Finance Committee takes up the budget next week.

In interviews Friday, two senators said they were exploring further cuts to their workspaces outside the Capitol, known as legislative information offices or LIOs.

Without cuts, the state will pay some \$5.6 million for more than 30 legislative office spaces next year, according to a breakdown provided by a legislative employee. Those costs range from some \$4 million for the Anchorage LIO to \$300,000 for space in Fairbanks to \$30,000 for an office in Kotzebue rented from the Iditarod dog musher John Baker.

Sen. Kevin Meyer, R-Anchorage, said he met with Sen. Gary Stevens, R-Kodiak, Sen. Charlie Huggins, R-Wasilla, and a legislative lawyer Friday morning to examine the state's contract for its Anchorage LIO, asking about "what kind of options we have."

"Office space is becoming more available now than what was available, say, a year or two ago," he said. "Things are changing."

The cost of the Anchorage LIO has drawn scrutiny over the past two years after the Legislature agreed to a new 10-year lease of a renovated space in a deal negotiated by Rep. Mike Hawker, R-Anchorage, when he was chairman of the Legislative Council for the previous two years. Critics have mocked the renovated building as the "Taj Mahawker."

Annual payments went up to \$4 million from \$682,000 when the Legislature moved into the space in January, with costs per square foot more than double market rates.

Stevens, the Kodiak senator, is now chairman of the Legislative Council, the body that handles lawmakers' internal business and budgets.

In an interview Friday, he wouldn't reveal what kind of changes he was examining for the Anchorage office space, but he said he was given the job of cutting the Legislature's budget.

"LIOs are a major part of that budget, so we've been looking at all sorts of options: entirely closing

some of the smaller LIOs, taking other LIOs and reducing them to 50 percent, open only half the time,” he said. “We’re certainly looking at the Anchorage LIO as well, trying to find out what options are available to us.”

The Legislature’s lease for its Anchorage space is subject to lawmakers appropriating money to pay for it. Asked if the Legislature had the ability to opt out, Meyer responded: “You can always get out of every lease -- it’s just at what cost, and any consequences.”

“I don’t know that I’m comfortable enough to say we can easily get out of this without lengthy legal expense involved,” he said. “And then is it even worth it? How much do we save?”

Mark Pfeffer, the Anchorage LIO’s developer, didn’t return phone calls Friday.

One alternative for legislative space in Anchorage could be the state-owned Atwood Building downtown, where Gov. Bill Walker and some agencies already have offices.

The building does not currently have room for the legislative offices but the space is “always in flux,” said Leslie Ridle, deputy commissioner at the Department of Administration who’s responsible for the Division of General Services, which manages state leasing and facilities.

“It’s like a little puzzle,” Ridle said in a phone interview. “Do I know exactly if there’s enough room for every single piece of the Legislature to fit in? I don’t know that there is right this minute, but it’s a moving target.”

Ridle wouldn’t say whether she’d discussed the use of the space with the Legislature, referring questions to legislative officials.

Source URL: <http://www.adn.com/article/20150328/legislature-reconsiders-its-anchorage-building-it-hunts-more-cuts>

Links:

[1] <http://www.adn.com/author/nathaniel-herz>

[2] <http://www.adn.com/image/150109liodsc-9776jpg-1421023893>

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Anchorage

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Anchorage

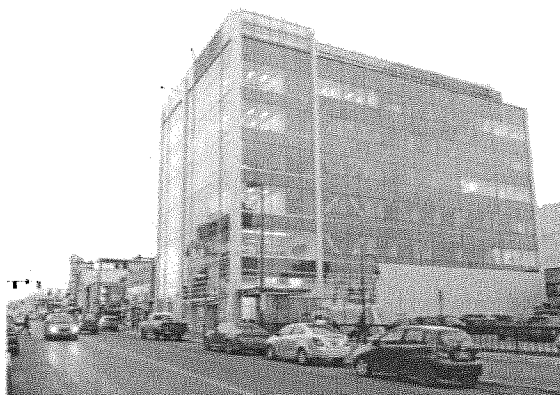
Lawsuit challenges expensive state lease for Anchorage legislative building

Lisa Demer | March 31, 2015

Like 587 G+1 0

An Anchorage lawyer whose building adjoins the rebuilt state legislative building downtown on Tuesday sued the state, contending that the lease for what he calls a newly constructed Legislative Information Office is illegal, too expensive and should be declared "null and void."

Jim Gottstein has owned the retail and office building at Fourth Avenue and G Street since 1995 and it's been in his family since 1926, the lawsuit said. He contends that the remodeling, which stripped the old legislative building down to its steel frame, damaged the shared wall between his Alaska Building, built in 1916, and the Anchor Pub, which used to be the Empress Theatre and was incorporated into the Legislature's building. He describes his building as a historic landmark and the first to use concrete in Anchorage.



The remodeled Legislative Information Office building in downtown Anchorage was ready for legislators and staffers to move in as finishing touches were applied in early January.

Erik Hill / Alaska Dispatch News

But the bigger part of his complaint seeks to invalidate the state lease extension signed in 2013 in which the state committed to pay \$3.4 million a year for the next 10 years. The deal, negotiated by state Rep. Mike Hawker, R-Anchorage, when he chaired the joint House-Senate committee that manages the Legislature's business, has been sharply criticized as too expensive and not a good deal for the state. With the current state budget crisis, some legislators are examining whether the state can abandon the lease and move into cheaper space.

"One of the purposes was just to say, look, everybody is complaining about this thing and it's illegal," Gottstein said in an interview.

Hawker declined to comment Tuesday, saying he was didn't know anything about the lawsuit.

The suit names a number of defendants including the state Legislative Affairs Agency, the building owner -- a company owned by Bob Acree and developer Mark Pfeffer -- and companies involved in the remodeling. Doug Gardner, legal director for the Legislative Affairs Agency, said he couldn't comment on the suit.

In an email, Pfeffer, who managed the project, said he looked forward to resolving the matter "in a rational and thoughtful forum."

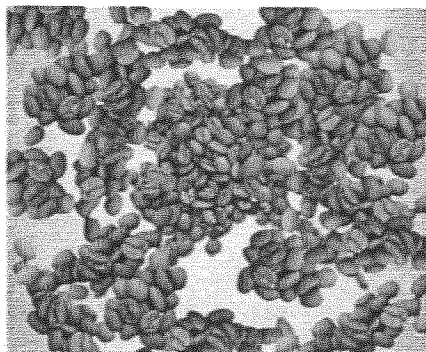
"From the beginning, everyone has operated above board and in good faith to provide public building space in Anchorage for our Legislature," Pfeffer said. "To date, everything that was asked of everyone and authorized by the Legislature has been accomplished on time and within budget."

The lease payments don't include property taxes, building insurance, utilities, routine maintenance or janitorial services, which often are incorporated into commercial leases. Gottstein said the lease underestimates the costs in other ways as well, including the way it calculates the building's square footage.

Gottstein contends the no-bid lease agreement violates a state law that says leases can only be extended for a



decade with no bid if the price is at least 10 percent below market value.



"In fact, the rental rate of the LJO Project is at least twice the market rental value," the suit contends.

A semi-retired commercial broker, Larry Norene, in 2013 called the lease "outrageous." He determined that the state was effectively paying more than \$7 per square foot a month once all the costs were added in. The going rate for commercial space downtown was \$2 to \$3 a square foot.

Gottstein also contends the lease arrangement is not really an extension since the building was redone so extensively. Instead, it's akin to new space and the state should have sought bids before signing the lease document, Gottstein said.

An appraiser who evaluated the project for the state determined the rent was below market value. But appraiser Timothy Lowe, who was contracted by the Alaska Housing Finance Corp., used a method rooted in the value of the building once Pfeffer completed the renovation, not one based on the going rate for office space in Anchorage.

Gottstein said the lengthy appraisal was an effort to "hide the ball."

Reporter Nat Herz contributed to this story.

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Robin Fritz · Sterling, Alaska

Thank you Mr. Gottstein!

Like · Reply · 1 · Apr 1, 2015 11:05pm



Lisa Smith · Anchorage, Alaska

Good for you Jim!

Like · Reply · 3 · Apr 1, 2015 3:54pm



Sandra Blessing Wagenius · Portland, Oregon

Who says the capitol hasn't moved! So much for voter rights.

Like · Reply · 1 · Apr 1, 2015 12:49pm



Tyler Carlson · Floor Manager at Sea Galley Restaurant

So glad to see someone finally stepping up against this deal. Mr. Gottstein, you are a true Alaskan. Thank you!!

Like · Reply · 6 · Apr 1, 2015 12:47pm



Barbara McDaniel

Thanks for stepping up Mr. Gottstein! You are a proven, loyal Alaskan! This deal clearly smells rotten. I can't wait for the cavalcade of disclosures we access through subpoenas and discovery! News reports pointing out specifically which legislators voted for this and other bad ideas would be very helpful to the electorate.

Like · Reply · 6 · Apr 1, 2015 12:24pm



Michel Diab · Works at Business

If the building was owned by one of the three Oil companies then people would be all over this.... funny how that works

Like · Reply · 2 · Apr 1, 2015 10:14am



Charles W. Bingham Jr. · Works at Self employed

The oil companies wouldn't have wasted the \$\$\$

Like · Reply · 2 · Apr 1, 2015 11:23am



Charles W. Bingham Jr. · Works at Self employed

Where is the F.B.I.? If it "walks like a duck, ..."

Like · Reply · 10 · Apr 1, 2015 9:32am



Kate McLaughlin · Chenega Bay, Alaska

Don't know about how the work was actually performed, but anyone who is half way competent at reading leases, budgets, and comparing costs, could see this "deal" was very, very smelly.

Like · Reply · 6 · Apr 1, 2015 8:48am



George Barrett · Anchorage, Alaska

Jim, go after the people, especially Hawker, for putting this building lease deal together. This whole deal is unimaginable. Somebody needs to be held accountable for the cost to the state that exceeds market lease rates!

Like · Reply · 6 · Apr 1, 2015 8:33am

Jack Keane · Anchorage, Alaska

YES!!! Thank you Jim for doing what some one in the Leg or Admin SHOULD be doing!

While we're here let's consider the ten year occupancy cost:

\$34 million of rent (over \$7/sf) plus \$7.5 million to finish the "dropped ceilings, walls, floors, doors and bathrooms that come to \$150 Sf, for a total of \$41,500 plus maintenance and utilities.

There is (barely) 50,000SF so WE are paying \$830 per square foot for just ten year's use of a building we don't own.

I don't know current building costs but something in the range of \$300sf might be close, but let's gloss

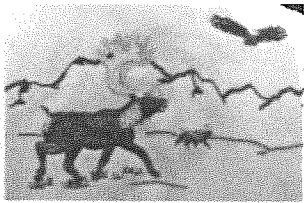
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Heidi A. Wyckoff

From: Jeffrey W. Robinson
Sent: Thursday, October 22, 2015 2:58 PM
To: Heidi A. Wyckoff
Subject: FW: Today

From: Jeffrey W. Robinson
Sent: Tuesday, April 14, 2015 11:33 AM
To: Mark Scheer <MScheer@scheerlaw.com>; James B. Gottstein <james.b.gottstein@gottsteinlaw.com>
Subject: RE: Today

Great. See you then.

From: Mark Scheer [<mailto:MScheer@scheerlaw.com>]
Sent: Tuesday, April 14, 2015 11:16 AM
To: Jeffrey W. Robinson; James B. Gottstein
Cc: Mark Scheer
Subject: RE: Today

Gentlemen: I just landed – flight from Seattle was a little late getting started, but at least we're here this time! I have to stop by Criterion and meet with client, and then we'll be over to the building. Let's shoot for 12:30 p.m. start. Sorry for the slight delay on getting started – see you then.

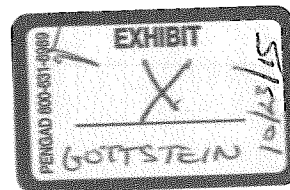
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e-mail: mscheer@scheerlaw.com / website: www.scheerlaw.com

"Excellence means when a man or woman asks of himself more than others do." - Jose Ortega y Gasset

From: Jeffrey W. Robinson [<mailto:jeffrey@anchorlaw.com>]
Sent: Tuesday, April 14, 2015 10:03 AM
To: James B. Gottstein
Cc: Mark Scheer
Subject: RE: Today

Thanks, Jim.

From: James B. Gottstein [<mailto:james.b.gottstein@gottsteinlaw.com>]
Sent: Tuesday, April 14, 2015 9:06 AM



To: Jeffrey W. Robinson
Cc: 'Mark Scheer'; james.b.gottstein@gottsteinlaw.com
Subject: RE: Today

Hi Jeff,

Mark and Bob may be in flight. I have noon to 5 blocked out and that is what you put in the stipulation. I would be surprised if it takes that long.

James B. Gottstein
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501
Tel: (907) 274-7686 Fax: (907) 274-9493
e-mail: James.B. Gottstein@GottsteinLaw.Com

From: Jeffrey W. Robinson [<mailto:jeffrey@anchorlaw.com>]
Sent: Tuesday, April 14, 2015 8:51 AM
To: James B. Gottstein
Cc: 'Mark Scheer'
Subject: Today

Good morning, gentlemen. What time are we planning on getting the inspection under way?

JWR

Jeffrey W. Robinson
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jeffrey@anchorlaw.com
1227 W. 9th Ave. Ste. 200
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Fax: (907) 277-8235
www.anchorlaw.com



ALASKA BUILDING, INC.

406 G Street, Suite 206, Anchorage, Alaska 99501
(907) 274-7686 Phone ~ (907) 274-9493 Fax

May 1, 2015

Governor Bill Walker
Suite 1700
550 West 7th Avenue
Anchorage, AK 99501

Hand Delivered

Open Letter

Re: Line Item Veto of Illegal Anchorage Legislative Information Office Lease

Dear Governor Walker:

This is to urge you to stand up against the corruption involved in the sole source lease of the Anchorage Legislative Information Office (LIO) by using your line item veto authority to eliminate its FY 2016 appropriation, or at least reduce it to 10% below the market rate.

As you may know, the Alaska Building was damaged by the demolition of the then existing LIO and Anchor Pub and the construction of the new LIO, and Alaska Building, Inc., had to file a lawsuit over it. Since the sole source lease was illegal I included in the lawsuit that the lease should be declared invalid or the rent reduced.¹ Frankly, I should not have to bear the risk of bringing this claim and believe that as the Governor of Alaska you should address this blatant corruption.

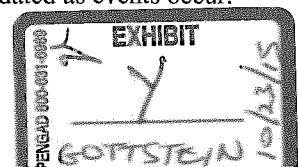
Since we are both lawyers, I will provide the legal analysis. First, the lease was purportedly allowable under AS 36.30.083, which provides:

(a) Notwithstanding any other provision of this chapter, the department, the Board of Regents of the University of Alaska, the legislative council, or the court system may extend a real property lease that is entered into under this chapter for up to 10 years if a minimum cost savings of at least 10 percent below the market rental value of the real property at the time of the extension would be achieved on the rent due under the lease. The market rental value must be established by a real estate broker's opinion of the rental value or by an appraisal of the rental value.

(emphasis added). In other words, there is a limited exception to the normal public bidding process required under state law to protect the public, allowing the legislature to extend a lease for up to 10 years, if the rental rate is at least 10 percent below market value.

First, tearing down the existing building to its steel frame and then constructing a brand new building, with no occupancy for 15 months, is not an extension.

¹ The Complaint and other documents pertaining to the lease have been uploaded to <http://gottsteinlaw.com/AkBldgv716W4thAve/AkBldgv716W4thAveLLC.htm> and will be updated as events occur.



Second, it is common knowledge that the lease rate is over 2 times the market rate. For example, the December 21, 2013, Alaska Dispatch story, No-Bid Deal To Expand Legislative Offices Downtown Draws Criticism, states, "on a square-footage basis, the state will pay more than double the going rate for downtown office space, according to a check of leases and space available on Multiple Listing Service." More specifically, comparing apples to apples, the current LIO lease rate is about \$7.15 per square foot per month, while the market rate is about \$3.00. Ten percent below the market rate would be \$2.70/square foot per month, which works out to \$104,310 per month instead of the rate specified in the illegal lease of \$281,638.

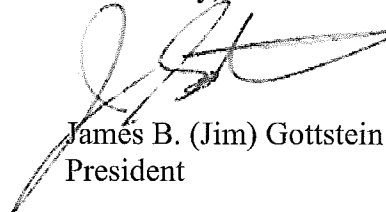
Finally, that this sole source lease was approved under these circumstances leads to the conclusion that it is the result of corruption. In this case, a crime appears to have been committed. AS 36.30.930(2) provides:

(2) a person who intentionally or knowingly contracts for or purchases supplies, equipment for the state fleet, services, professional services, or construction under a scheme or artifice to avoid the requirements of this chapter is guilty of a class C felony.

I don't know who is guilty of this crime, but it seems to me that in addition to using your line item veto authority, the Attorney General should be asked to investigate this corruption and take appropriate action.

Regardless of whether an investigation into and appropriate action taken with respect to this corruption occurs, I urge you to veto the FY 2016 appropriation for the Anchorage LIO entirely, or at least reduce it to \$104,310 per month.²

Yours truly,



James B. (Jim) Gottstein
President

cc: e-mail
Craig Richards (via e-mail)

² The so-called lease extension is clear that it is subject to the funds being appropriated, so this should not result in any liability to the state. In addition, that the lease is illegal is also a defense to any claim of breach.

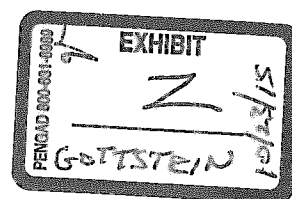
**ALASKA BAR ASSOCIATION
ETHICS OPINION NO. 97-2**

**Use Of Threats Of Criminal Prosecution
In Connection With A Civil Matter**

The Ethics Committee has been asked to review Ethics Opinion No. 77-3 in light of changes to Alaska Rules of Professional Conduct ("Ethical Rules") adopted in 1993 and American Bar Association Formal Opinion 92-363 relating to the Use of Threats of Prosecution in Connection with a Civil Matter. The Ethics Committee has determined that in light of the present ethical rules, Ethics Opinion No. 77-3 should be withdrawn. Under Alaska's Ethical Rules, it is ethical for a lawyer to use the possibility of presenting criminal charges against the opposing party in a private civil matter to gain relief for a client, provided that the criminal matter is related to the client's civil claim, the lawyer has well-founded belief that both the civil claim and the criminal charges are warranted by the law and the facts, and the lawyer does not attempt to exert or suggest improper influence over the criminal process.

Ethics Opinion No. 77-3 addressed the issue of whether an attorney or firm which represents a client in a civil case to collect a debt may also initiate a criminal prosecution for violation of a statute which makes failure to pay a crime. The opinion holds that an abuse of the ethical rules occurs only where the motive for the prosecution is solely to obtain an advantage in the civil case. The opinion goes on to state that communications from the lawyer to the offender that the offender may avoid prosecution by paying are clearly prohibited by prior Disciplinary Rule 7-105 which stated "[a] lawyer shall not present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter."

In reviewing Ethical Opinion 77-3, it is important to first consider the purpose of prior DR 7-105 and the presence or absence of similar prohibitions in Alaska's Ethical Rules. The stated purpose for DR 7-105 was to prevent the oppressive use, and thereby the subversion, of the criminal justice system. This provision, however, was deliberately omitted in the Model Rules of Professional Conduct. The reasoning behind this omission rested on the drafters' position that "extortionate, fraudulent, or otherwise abusive threats were covered by other, more general prohibitions in the Model Rules and thus that there was no need to outlaw such threats specifically." *C.W. Wolfram, Modern Legal Ethics* (1986) § 13.5.5 at 718, citing *Model Rule 8.4 legal background note (Proposed Final Draft, May 30, 1981)*. Similar to the Model Rules, there is no counterpart to DR 7-105 in Alaska's Ethical Rules.



The American Bar Association addressed a similar issue in Formal Opinion ("ABA Opinion") 92-363. This opinion holds that the Model Rules do not prohibit a lawyer from using the possibility of presenting criminal charges against the opposing party in a civil matter to gain relief for her client, provided that the criminal matter is related to the civil claim, the lawyer has a well-founded belief that both the civil claim and the possible criminal charges are warranted by the law and the facts, and the lawyer does not attempt to exert or suggest improper influence over the criminal process.

In reaching this decision, the ABA Opinion cites the fact that the counterpart to DR 7-105 was deliberately not contained in the Model Rules. This fact, along with the reasoning noted above, supports the conclusion that the drafters of the model rule intended to eliminate the previous prohibitions contained in DR 7-105. The ABA Opinion also cites other Model Rules which could govern an attorney's conduct similar to those in question. These rules include Model Rule 8.4(b) which provides that it is professional misconduct for a lawyer to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." Model Rule 4.4 prohibits a lawyer from using means that "have no substantial purpose other than to embarrass, delay, or burden a third person..." Threatening criminal charges to merely harass a third person would violate this rule. Additionally, Model Rule 4.1 imposes a duty on lawyers to be truthful when dealing with others on a client's behalf. A lawyer who threatens criminal prosecution, without any actual intent to so proceed would violate this rule. Finally, Model Rule 3.1 prohibits an advocate from asserting frivolous claims. A lawyer who threatens criminal prosecution that is not well founded in fact or law, or threatens such prosecutions in furtherance of a civil claim that is not well founded violates this rule.

While the Model Rules contain no provision expressly requiring that the criminal offense be related to the civil action, it is only in this circumstance that a lawyer can defend against charges of compounding a crime (or similar crimes).¹ A relatedness requirement avoids exposure to the charge of compounding, which would violate Rule 8.4(b)'s prohibition against "criminal act[s] that reflect adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." It also tends to ensure that negotiations will be focused on the true value of the civil claim, which presumably includes criminal liability arising from the same facts or transaction, and discourages

¹ See AS 11.56.790 (*Alaska Compounding Statute*) and AS 11.41.520 (*Alaska's Extortion Statute*).

exploitation of extraneous matters that have nothing to do with evaluating that claim.

Alaska's Ethical Rules contain similar or identical language to the Model Rules noted above. Under these circumstances, this committee agrees with the logic of the ABA Formal Opinion No. 92-363. The holding in Ethics Opinion 77-3 is based upon the language of past DR 7-105, which is not contained in the present Ethical Rules. Additionally, other provisions within the Ethical Rules adequately address potential unethical conduct. Finally, the rule adopted under ABA Formal Opinion No. 92-363 provides clearer guidelines for practitioners and is more consistent with an attorney's obligations to zealously assert a client's position in our adversary system.

Therefore, under Alaska Ethical Rules, it is not unethical for a lawyer to use the possibility of presenting criminal charges against the opposing party in a private civil matter to gain relief for a client, provided that the criminal matter is related to the client's civil claim, the lawyer has a well-founded belief that both the civil claim and the criminal charges are warranted by the law and the facts, and the lawyer does not attempt to exert or suggest improper influence over the criminal process. Therefore, Ethics Opinion 77-3 is withdrawn.

Approved by the Alaska Bar Association Ethics Committee on March 6, 1997.

Adopted by the Board of Governors on March 21, 1997.

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